

West Bountiful City Municipal Code

Title 5 BUSINESS LICENSES AND REGULATIONS

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Chapter 5.04 BUSINESS LICENSES IN GENERAL

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5.04.010 Definitions.

For the purposes of this chapter the following terms shall have the meanings herein prescribed:

"Business" means all activities engaged in within the corporate limits of West Bountiful carried on for the purpose of gain or economic profit, except that employees rendering service to employers shall not be considered to be engaging in business unless otherwise specifically prescribed.

"Engaging in business" means the sale of tangible personal property or the rendering of personal services for others for a consideration by persons engaged in any trade, craft, business, occupation, profession or other calling, except the rendering of personal services by an employee to his or her employer under any contract of personal employment, but includes the operation of storage buildings or storage warehouses for the storing of motor vehicles, trailers, boats, and other household equipment or personal property.

"Employee" means the operator, owner or manager of a business and any persons employed by such person in the operation of the business in any capacity, including any salesperson, agent or independent contractor engaged in the operation of the business in any capacity.

"Number of employees" means the average number of employees engaged in business each regular working day during the preceding calendar year. In computing this number each regular full-time employee shall be counted as one employee, and each part-time employee shall be counted as that fraction which is formed by using the total number of hours worked by such employee as the numerator and the total number of hours regularly worked by a full-time employee as the denominator.

"Person" means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, co-partnership, joint venture, club, company, joint stock company, business trust, corporation, association, society or other group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise.

"Gross sales" shall not include:

1. The amount of any federal tax, except excise taxes imposed upon or with respect to retail or wholesale, whether imposed upon the retailer, wholesaler, jobber, or upon the consumer and regardless of whether or not the amount of federal tax is stated to customers as a separate charge; and
2. The amount or net Utah State Sales Tax. The term "gross sales" includes the amount of any manufacturer's or importer's excise tax included in the price of the property sold, even though the manufacturer or importer is also the wholesaler or retailer thereof, and whether or not the amount of such tax is stated as a separate charge. (Prior code § 5-1-1)

5.04.020 License required.

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It is unlawful for any person to engage in or carry on any business within the city without first taking out or procuring a license to do so. (Prior code § 5-1-2)

5.04.030 Application for license.

All applications for a business license shall be made in writing to the city recorder and filed for each place of business, service or profession within the city. All such applications shall be verified and contain the following information:

- A. The name of the person desiring the license; if a partnership, the names of all of the partners, and if a corporation, the names of the principal officers thereof;
- B. The kind of business desired, stating the type and nature of the business to be carried on;
- C. The exact location of the place where such business is to be carried on, describing the same by street number; if only a part of the premises at a given address is to be occupied for the licensed business, then the exact description of the part which is to be so occupied; and
- D. The amount of gross sales or gross income received by the business during the twelve (12) months immediately preceding application for the license; if a new business is involved, the anticipated gross sales or gross income for the remainder of the calendar year to be covered by such license. If at the end of the first license period the new business has exceeded by ten (10) percent its anticipated gross sales or gross income as stated in the original application, the person responsible for the new business shall file an amended application and shall pay any additional license fees due for that period. This amended application shall set forth the business' actual gross sales or gross income. (Prior code § 5-1-3)

5.04.040 License fee levied.

The license fee payable by persons engaging in or carrying on any business within the city shall be periodically fixed by resolution of the city council. (Prior code §5-1-4)

5.04.050 License additional to all regulatory licenses.

Except as otherwise expressly provided, the license fee imposed by this chapter shall be in addition to any and all other taxes or licenses imposed by any other provisions of the ordinances of the city. (Prior code § 5-1-5)

5.04.060 License year.

The license year herein shall be the calendar year. (Prior code § 5-1-6)

5.04.070 Delinquent date and penalty.

All license fees provided for herein shall be due and payable on or before January 5th of any calendar year, or before commencing a new business. In the event any fee is not paid on or before such date, a penalty of fifty (50) percent of the amount due shall be imposed and shall become a part of the license

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fee imposed by this chapter. The date of delinquency and the amount of the penalty may be amended periodically by resolution of the city council provided that the application of the amended date and penalty be prospective only, effective the next calendar year. (Prior code § 5-1-7)

5.04.080 Records to be maintained.

It shall be the duty of every person liable for the payment of any license fee imposed by this chapter to keep and preserve for a period of three years such books and records as will allow the city to determine the amount of any license fee for which he or she may be liable under the provisions of this chapter. This will include records accurately reflecting the amount of his or her gross annual sales of goods and services and the number of persons employed by the business. (Prior code § 5-1-8)

5.04.090 Returns not to be public.

Actual returns of gross sales or gross income or the amounts thereof made to the city recorder as required by this chapter shall not be made public nor shall such be subject to the inspection of any person except the city recorder or his or her authorized agent, or to those persons authorized by order of the city council. It is unlawful for any person to make public or to inform any other person as to the contents of any return, except as is in this section authorized. (Prior code § 5-1-9)

5.04.100 Unlawful to provide false information.

It is unlawful for any person to provide false information to the city in relation to the application for, issuance of, or continuation of, a business license, or to knowingly cause or permit the same to be done. (Prior code § 5-1-10)

5.04.110 Denial or revocation of business license.

A. A business license may be denied or revoked for any good cause reasonably related to the health, safety or general welfare of the residents of West Bountiful City, including but not limited to the violation of any federal, state or local law (including the provisions of this chapter).

B. Unless the mayor shall otherwise direct, the decision to deny or revoke a business license shall be made by the city recorder. Any such decision shall be in writing, including a simple statement of the reasons therefore. The denial or revocation shall take effect after the written decision has been filed in the records of the city recorder and a copy thereof has been mailed to the applicant or license holder at the address listed in that person's application. If the applicant or license holder was present when the decision to revoke or deny was made, or is otherwise personally aware of the decision, the denial or revocation shall be effective when the written decision is filed in the records of the city recorder.

C. Any person aggrieved by a decision to deny or revoke a business license may appeal that decision by filing a written notice of appeal with the city recorder within fifteen (15) days of the effective date of the denial or revocation.

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D. An appeal of a decision to deny or revoke a business license shall be conducted as provided in Section 2.60.010 of these ordinances. (Prior code § 5-1-11)

5.04.120 License not transferable.

No license granted or issued under the provisions of this chapter shall in any manner be assignable or transferable, or authorize any person other than the licensee named therein to do business than is therein named to be done or transacted. (Prior code § 5-1-12)

5.04.130 Exemptions to license.

No license fee shall be imposed under this chapter upon the following:

A. Any person engaged in business for solely religious, charitable or other type of strictly nonprofit purpose who is tax-exempt in such activities under the laws of the United States and the state of Utah.

B. Any person engaged in a business specifically exempted from municipal taxation and fees by the laws of the United States or the state of Utah.

C. Upon any person selling, offering for sale, or taking orders for or soliciting the sale of any farm products, but not including dairy products, actually produced, raised or grown by the person so selling, offering for sale or taking orders for, or soliciting the sale of any such farm products. (Ord. 263-99 (part); prior code § 5-1-13)

5.04.140 Reciprocal license agreement.

The city council may enter into reciprocal license agreements with adjoining towns or cities for the forbearance of the collection of license fees, upon such terms and conditions as it deems advantageous to the city. (Prior code § 5-1-14)

Chapter 5.06 SOLICITORS, CANVASSERS, AND PEDDLERS

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5.06.010 License Required.

It is unlawful for any person to engage in the business of solicitor, canvasser, or peddler without first obtaining a permit and/or license therefore as provided in this chapter.

5.06.020 Definitions.

(a) **“Peddler”** as used in this chapter shall include a person, whether or not a resident of West Bountiful City, traveling by foot, wagon, motor vehicle, or any other type of conveyance, from place to place, from house to house, or from street to street carrying, conveyance, or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck farm products or provisions, or who, without traveling from place to place, shall sell or offer the same for sale from a wagon, motor vehicle, or other vehicle or conveyance. It is further provided that one who solicits orders and as a separate transaction makes deliveries to purchasers as part of a scheme or design to evade the provisions of this chapter shall be deemed a peddler subject to the provisions of this chapter. The word “peddler” shall include the words “hawker and “huckster”

(b) **“Canvasser”** or **“solicitor”** means any individual whether or not a resident of West Bountiful City, traveling either by foot, wagon, motor vehicle, or other type of conveyance, from place to place, from house to house, or from street to street, taking or attempting to take orders for the sale of goods, wares and merchandise, personal property of any nature whatsoever for future delivery, or for services to be furnished or performed in the future, whether or not such individual has, carries, or exposes for sale a sample of the subject of such sale, or collects advance payments of such sale, provided that such definition shall include any person who for himself, or for another person, firm or corporation, hires,

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leases, uses or occupies any building, structure, tent, hotel or motel room, samples and taking orders for delivery.

5.06.030 Application for License.

(a) Applicants for permits and licenses under this chapter, shall file a sworn application in writing signed by the applicant, if an individual, by all partners, if a partnership, and by the president if a corporation, or by an agent, including a state or regional agent, with the Planning Licensing Department which shall give the following information:

- (1) The name of the applicant and if the applicant is an employee or agent of a corporation, the name of the corporation.
- (2) The address of the applicant, and if the applicants is an agency or employee of a corporation, the address of the corporation.
- (3) A brief description of the nature of the business and the goods to be sold and from whom and where the applicant obtains the goods to be sold.
- (4) If the applicant is employed by or an agent of another person, the name and permanent address of such other person or persons.
- (5) The length of time for which the applicant desires to engage in business within the city.
- (6) A list of the other municipalities in which the applicant has engaged in business within the six month period preceding the date of the application.
- (7) A photograph of the applicant, taken within six months immediately prior to the date of filing the application. The photograph shall be one and one-half (1 1/2) inches by one and one-half (1 1/2) inches showing the head and shoulders of the applicant in a clear and distinguishing manner.
- (8) A statement as to whether or not the applicant, or any of his employers, have been convicted of any crime, misdemeanor or violation of any municipal ordinance, the nature of the offense and the punishment or penalty.
- (9) If the applicant desires to sell fresh vegetables, fruits, meats, or other foodstuffs, a statement by a reputable physician in the State of Utah, dated not more than ten (10) days prior to submission of the application, certifying the applicant to be free of infectious, contagious, or communicable diseases.
- (10) If the applicant is employed by another person, firm or corporation, documents showing that the person, firm or corporation for which the applicant proposes to do business is authorized to do business within the State of Utah.

(b) Each applicant shall, at their own expense, obtain a personal background investigation the Bureau of Criminal Identification (BCI) in Salt Lake City, Utah and submit a certified copy of said report with the application

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5.06.040 Review and Issuance of License.

(a) The applicant(s) for a solicitors license shall present to the Director of Licensing a certified clearance from the Bureau of Criminal Identification (BCI) for each solicitor operating under said license.

(b) On receiving the application, the Director of Licensing shall refer the application to the Chief of Police who shall review the background report of the applicant's business and moral character.

(c) If as a result of the review, the applicant's character and business responsibility are found to be satisfactory, the Chief of Police shall endorse such upon the application and return it to the Director of Licensing who shall upon payment of the prescribed license fee deliver to the applicant their permit and issue a license. The license shall contain the signature of the issuing officer and shall show the name, address and photograph of the licensee, the kind of goods to be sold pursuant to the application, and the expiration date of the license.

(d) If as a result of the review, the applicant's character and business responsibility are found to be unsatisfactory, the Chief of Police shall endorse such upon the application together with a statement of his reasons therefor and return the application to the Director of Licensing who shall notify the applicant that their application has been disapproved and that no permit and license will be issued.

5.06.050 Fees and Time Limit.

(a) Base fee for any license issued under this Chapter shall be \$25.00 per business plus \$5.00 per week or \$20.00 per month per solicitor.

(b) Any license issued under this Section shall be for a period not to exceed one hundred and twenty (120) days.

(c) The effective issuance date of the license as herein provided shall be ten (10) days from the date that said person made application for such license. Said license shall not be transferrable to another person by the holder thereof.

(d) None of the license fees provided for by its part shall be applied so as to engage an undue burden upon interstate commerce.

In any case where a license fee is believed by the licensee or applicant for license to place an undue burden upon interstate commerce, he or she may apply to the City Administrator for an adjustment of the fee so that it will not be discriminatory, unreasonable or unfair to interstate commerce. Such application may be made before, at or within six (6) months after paying the prescribed license fee.

5.06.060 Licenses.

(a) The Director of Licensing shall issue to each licensee a laminated license card which shall read "West Bountiful Solicitor License" along with a license number. Such license shall be constantly carried by the licensee while engaging in business in West Bountiful City and exhibit such license card upon request by anyone desiring proof of such license.

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(b) It shall be the duty of any police officer of West Bountiful City to require any person seen soliciting, canvassing or peddling, and who is not known by such officer to be duly licensed, to produce his or her license and to enforce the provisions of this chapter.

5.06.070 Revocation of License.

(a) Permits and licenses issued pursuant to this chapter may be revoked by the City Administrator, after notice and hearing, for any of the following causes:

- (1) Fraud, misrepresentation or a false statement contained in the application for the license.
- (2) Fraud, misrepresentation or a false statement made in the course of carrying on their business as a solicitor, canvasser or peddler.
- (3) Any violation of this chapter.
- (4) Conviction of any crime or misdemeanor involving moral turpitude.
- (5) Conducting the business of soliciting, or of canvassing or peddling in an unlawful manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.
- (6) Soliciting before the hour of 10:00 A.M. and after the hour of 6:00 P.M.

5.06.080 Appeals.

Any person aggrieved by the action of the City Attorney in the revocation of a license or the action of the Director of Licensing in the denial of a license pursuant to this chapter, may appeal such action to the City Council. Such appeal shall be filed with the City Recorder within fourteen (14) days after notice of the action complained of has been mailed to such person. A written statement setting forth fully the grounds for the appeal shall be included with the appeal.

The City Council shall set a time and place for the hearing on such appeal and notice of such hearing shall be given to the applicant in the same manner as above provided in Subsection B of Section 5-5-106.

5.06.090 Exceptions.

Nothing in this chapter is intended to require a soliciting license for soliciting by:

- (a) Non-profit, charitable, or religious institutions qualified and authorized as such by the State of Utah.
- (b) Persons soliciting at a residence pursuant to an appointment previously made with responsible individuals or occupants of such residence.
- (c) Local Church, school, charitable or civic groups when engaged in fund raising projects.

5.06.101 License Required.

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(a) It is unlawful to conduct a temporary business without first having obtained a Temporary Business License.

(b) A temporary business license may be issued to a temporary business meeting all of the following requirements:

(1) The conduct of the requested use will not have any detrimental effects on adjacent properties and will be in general harmony with surrounding uses.

(2) The requested use will not create excessive traffic hazards on adjacent streets.

Sufficient off-street parking shall be provided which shall be designed to meet all City parking regulations. A site plan showing where the sale of goods will take place, points of ingress and egress to the site, and parking available for the temporary business shall be provided.

(3) The applicant has obtained, or shall obtain, all necessary City permits associated with the placement and operation of the use, i.e., Health Department approvals for sales of food items, electrical permit for electrical hookups, fire department clearance for fireworks stands, etc.

(4) The applicant shall provide, at its own expense, for the restoration of the site of said use to its original condition, including such clean up, washing and replacement of facilities as may be necessary.

(c) Prior to the granting of any license, the applicant must pay the license fee.

(d) Any person or business which engages in business prior to obtaining a business license from the City shall pay an administrative fee of \$50.00 prior to the issuance of a license, which shall be in addition to the regular fee for the license.

5.06.102 License Fee.

A base fee of \$25.00 plus \$1.00 per day up to a maximum of \$100.00 total fee will be required for any temporary license

5.06.103 Site Requirements.

Any site proposed for use for a temporary business must be on property with curb and gutter with adequate traffic ingress and egress. A site plan shall be submitted showing where the sales shall be conducted on the site along with the location of at least four off-street parking spaces specifically designated for use by the temporary business. Such spaces may not be designated for or required by ordinance for any permanent, on-site business and the temporary business may not occupy such parking. In no event shall the temporary business be located in any way as to obstruct the clear vision of traffic ingress or egress from the site.

5.06.104 Time Limit.

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A temporary license shall be issued for a maximum of 120 days and shall be limited to one per business, corporation, individual, group of individuals or family per year.

5.06.105 Number of Businesses on Site.

Only one temporary business at a time shall be allowed on any given site, unless it can be shown that adequate ingress, egress and parking would be available for additional temporary businesses.

5.06.106 Signs.

One sign shall be allowed on the sales booth, table, stand or other sales structure for any licensed temporary business. No movable signs, banners, or off-premise signs shall be allowed.

5.06.107 Revocation of License.

(a) Permits and licenses issued pursuant to this chapter may be revoked by the Director of Licensing, after notice and hearing, or any of the following causes:

- (1) Fraud, misrepresentation or a false statement contained in the application for the license.
- (2) Fraud, misrepresentation or a false statement made in the course of operating the business for which the licenses has been granted.
- (3) Any violation of this chapter.
- (4) Conviction of any crime or misdemeanor involving moral turpitude.
- (5) Conducting the temporary business in an unlawful manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

5.06.108 Appeals.

Any person aggrieved by the action of the Director of Licensing in the denial of a license pursuant to this chapter may appeal such action to the City Council. Such appeal shall be filed with the City Recorder within fourteen (14) days after notice of the action complained of has been mailed to such person. A written statement setting forth fully the grounds for the appeal shall be included with the appeal. The City Council shall set a time and place for the hearing on such appeal. The City Council shall set a time and place for the hearing on such appeal and notice of such hearing shall be given to the applicant.

Chapter 5.08 AMUSEMENT DEVICES

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5.08.090 Gambling devices prohibited.

5.08.100 Maximum number of amusement devices allowed.

5.08.110 Prohibitions and regulations.

5.08.120 Suspension or revocation of license--Hearing.

5.08.010 Purpose.

The city council finds as fact and deems that in order to preserve the peace, health, safety and welfare of the inhabitants of the city, that the public patronage and use of amusement devices to be licensed and be subject to certain regulations as set forth in this chapter. (Prior code § 5-6-1)

5.08.020 Definitions.

For the purpose of this chapter, the following word shall have the following meaning:

"Amusement device" means a machine or device, whether mechanically or electronically operated, by means of the insertion of a coin, token or similar object, for the purpose of amusement or skill and for the play of which a fee is charged, or a device similar to any such machine or device but which has been manufactured, altered or modified so that operation is controlled without the insertion of coin, token or similar object. The term does not include coin-operated phonographs, ride machines designed primarily for the amusement of children, or vending machines in which are incorporated features of chance or skill. (Prior code § 5-6-2)

5.08.030 License required.

It is unlawful for any person to display for public patronage or operation any amusement device within this city without having first obtained a license therefor. (Prior code § 5-6-3)

5.08.040 Application for license.

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Application for license hereunder shall be filed in writing with the city recorder on forms provided by the city. (Prior code § 5-6-4)

5.08.050 License fee.

The fee for the licenses provided in this chapter shall be set periodically by resolution of the city council and shall apply to each amusement device used, played or exhibited for use or play. This fee shall be paid annually. All licenses issued, as provided herein, shall be for a calendar year.

The license fee for the initial year of application shall be paid when the license is granted by the city council. All license fees that are paid for each year thereafter shall be a renewal license fee and shall be payable on or before January 5th of each calendar year.

In the event the renewal fee is not paid on or before such date, a penalty of fifty (50) percent of the amount due shall be imposed and shall become part of the license fee imposed by this chapter. This date of delinquency and the amount of the penalty may be amended periodically by resolution of the city council; provided, that the application of the amended date and penalty be prospective only, effective the following calendar year. (Prior code § 5-6-5)

5.08.060 Referral to chief of police.

The application for such license, together with such information as is required by the city to be attached thereto, shall be referred to the chief of police for inspection and report. The chief of police shall, within fifteen (15) days after receiving such application, make a report to the city council. (Prior code § 5-6-6)

5.08.070 Display of license.

Every licensee under this chapter shall post and maintain such license upon the licensed premises in a place it may be seen at all times. (Prior code § 5-6-7)

5.08.080 License additional to all regular licenses.

The license fee imposed by this chapter shall be in addition to any and all other taxes or licenses imposed by any city ordinance. (Prior code § 5-6-8)

5.08.090 Gambling devices prohibited.

Nothing in this chapter shall in any way be construed to authorize, license or permit any gambling device whatsoever or any device which is in any way contrary to law. (Prior code § 5-6-9)

5.08.100 Maximum number of amusement devices allowed.

The maximum number of amusement devices that shall be allowable in or on any business premises for public patronage or keeping or displaying for public patronage shall be determined by a conditional use permit. (Prior code § 5-6-10)

5.08.110 Prohibitions and regulations.

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It is unlawful for any licensee or any agent or employee of such licensee to permit, suffer or allow any person under the age of eighteen (18) years to use or operate any amusement device located in or upon the licensed premises during such time as public elementary, secondary and high school are in session. It shall also be unlawful for the amusement devices to be placed closer than one thousand five hundred (1,500) feet from any school or church and will be conditional in the general commercial and neighborhood commercial zones and not permitted in any other zones. (Prior code § 5-6-11)

5.08.120 Suspension or revocation of license--Hearing.

A. The city council may suspend, revoke or refuse to renew any license for any of the following causes:

1. Fraud or misrepresentation in its procurement;
2. Violation or failure to comply with all of the provisions of this chapter;
3. Failure to pay any license fee levied when due;
4. Violation of any city ordinance, state or federal statute involving moral turpitude;
5. Any conduct or act of the licensee or his or her employees or any act permitted by him or her or them on the premises where such business is conducted tending to render the business or the premises where the business is conducted a public nuisance or a menace to the health, peace or general welfare of the city;
6. A violation of city ordinance or federal or state statute relating to the business or activity licensed and resulting from the conduct of such business or activity; or
7. For good cause shown.

B. Hearing.

1. Before the city council shall suspend, revoke or refuse the renewal of any license, it shall first afford the licensee an opportunity in a hearing to show good cause why such license should not be suspended, revoked, or why such license should be renewed.
2. This hearing shall be conducted as provided in Section 2.60.010. (Prior code § 5-6-12)

Chapter 5.12 BEER LICENSES AND REGULATIONS

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5.12.060 Beer must be purchased from licensed brewer or wholesaler.

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5.12.080 Permit from health department.

5.12.090 License not transferable.

5.12.100 Restrictions.

5.12.110 Inspection.

5.12.120 Denial or revocation of beer license.

5.12.010 Definitions.

The following words and phrases used in this chapter shall have the following meanings, unless a different meaning clearly appears from the context:

Alcoholic Beverage.

"Beer" and **"liquor"** as defined herein.

"Beer" means all products that contain 63/100 of one percent of alcohol by volume or one-half of one percent of alcohol by weight, but not more than four percent of alcohol by volume or 3.2 percent by weight, and are obtained by fermentation, infusion or decoction of any malted grain. Includes products known as "beer," "light beer," "malt liquor" or "malted beverages." Beer may or may not contain hops or other vegetable products.

"Brewer" means any person engaged in manufacturing beer, malt liquor or malted beverages.

"Licensed premises" means any room, house, building, structure or place occupied by any person licensed to sell beer on such premises under this chapter; provided, that in any hotel or other business establishment an applicant for Class B or C license may designate a room or portion of a building of such business for the sale of beer, which portion so specifically designated in the application for a license and the license subsequently issued shall be the licensed premises.

"Liquor" means alcohol, or any alcoholic, spirituous, venous, fermented, malt or other liquid, or combination of liquids, a part of which is spirituous, vinous or fermented, and all other drinks, or

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drinkable liquids that contain more than one-half of one percent of alcohol by volume and is suitable to use for beverage purposes. "Liquor" does not include any beverage defined as a beer, malt liquor or malted beverage that has an alcohol content of less than four percent alcohol by volume.

"Retailer" means any person engaged in the sale or distribution of beer or liquor to the consumer.

"Sell, sale and to sell" means any transaction, exchange or barter whereby, for any consideration, an alcoholic beverage is either directly or indirectly transferred, solicited, ordered, delivered for value, or by any means or under any pretext is promised or obtained, whether done by a person as a principal, proprietor, or as an agent, servant or employee, unless otherwise defined in the Alcoholic Beverage Control Act or rules adopted pursuant thereto.

"Wholesaler" means any person, other than a licensed manufacturer, engaged in the importation for sale, or in the sale of beer, malt liquor, or malted beverages in wholesale or jobbing quantities to retailers. (Prior code § 5-3-1)

5.12.020 License necessary to sell beer at retail.

It is unlawful for any person to sell beer at retail, in bottles, or other original containers, without a license therefor from the city council as hereinafter provided. A separate license shall be required for each place of sale and the license shall at all times be conspicuously displayed in the place to which it shall refer or for which it shall be issued. All licenses shall comply with the Utah Alcoholic Beverage Control Act and the regulations of the Alcoholic Beverage Control Commission, and every license shall recite that it is granted subject to revocation as hereinafter provided. (Prior code § 5-3-2)

5.12.030 Application for license.

A. All applications for licenses authorized by this chapter shall be verified and filed with the city council and shall state the applicant's name in full, that he or she has complied with the requirements and possesses the qualifications specified in the Alcoholic Beverage Control Act, and if the applicant is a co-partnership, the names and addresses of all partners and if a corporation, the names and addresses of all officers and directors, and must be subscribed by the applicant, who must state under oath that the facts stated therein are true. Applicants must furnish such other information as and when the city council shall require.

B. The application for such license shall be referred to the chief of police for an investigation and report. The chief of police shall cause an investigation to be made to determine the criminal history, if any, of the applicant(s) and the location of the proposed licensed premises. The chief of police shall make a report to the city council within ten (10) days after receiving an application or at the next regularly scheduled meeting of the council, whichever is later. Upon receiving the report, the city council shall act upon the application as it shall deem fair, just and proper in regard to granting or denying the same. (Prior code § 5-3-3)

5.12.040 License privileges.

Retail licenses issued hereunder shall be of the following kinds:

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A. Class A retail license which shall entitle the licensee to sell beer on the licensed premises in original containers for consumption off the premises;

B. Class B retail license which shall entitle the licensee to sell beer on the licensed premises in original containers for consumption on or off the premises; or

C. Class C retail license which shall entitle the licensee to sell beer on draft for consumption on the licensed premises.

All licenses provided for herein shall expire on the thirty-first day of December unless canceled sooner. (Ord. 264-00 (part); prior code § 5-3-5)

5.12.050 License fees.

Each application for a beer license shall be accompanied by a license fee in an amount set periodically by resolution of the city council. These fees shall be deposited in the city treasury if the license is granted, and returned to the applicant if denied. (Prior code § 5-3-6)

5.12.060 Beer must be purchased from licensed brewer or wholesaler.

It is unlawful for any licensee to purchase or acquire, or to have or possess for the purpose of sale or distribution, any beer except that which he or she shall have lawfully purchased from a brewer or wholesaler licensed under the Utah Alcoholic Beverage Control Act. (Prior code § 5-3-7)

5.12.070 Wholesalers must be licensed.

It is unlawful for any person to engage in the business of selling beer at wholesale within the corporate limits of the city without first obtaining a license therefore from the Utah Alcoholic Beverage Control Commission and paying such fees as are required therefore. (Prior code § 5-3-8)

5.12.080 Permit from health department.

No license shall be issued until the applicant therefor shall have first procured from the Davis County health department a permit therefor, which permit shall show that the premises to be licensed are in a sanitary condition and that the equipment used in the storage or distribution or sale of such beer complies with all health regulations of the county health department and of the state of Utah. (Prior code § 5-3-9)

5.12.090 License not transferable.

No license issued under the provisions of this chapter shall be used at any time by any person other than the one to whom it was issued. (Prior code § 5-3-10)

5.12.100 Restrictions.

No license shall be granted to sell beer in any theater, or within three hundred (300) feet of any church or school.

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It is unlawful, a nuisance, and a basis for the revocation of a beer license, to cause or permit any of the following:

- A. To sell or otherwise supply beer to any person under the age of twenty-one (21) years, or to any person who is intoxicated or under the influence of an intoxicating beverage, or to sell beer for consumption on the premises unless so licensed, or to permit the drinking of liquor on such premises;
- B. To sell or otherwise furnish or dispose of beer, or to allow it to be drunk or consumed on the premises or to allow beer to remain on that portion of the premises open to customers, patrons, or members of the public after one a.m. and before ten a.m.;
- C. To allow dancing to any music, other than recorded music, between the hours of six a.m. Monday and twelve midnight Saturday on any premises where beer is sold, or to allow any dancing between the hours of 12:01 a.m. Sunday and six a.m. Monday on the premises where beer is sold, and it shall also be unlawful for any person to sell or furnish beer, or to purchase or consume beer on premises where dancing is permitted in violation of this chapter;
- D. To not keep the licensed premises brightly illuminated at all times while it is occupied for business, or for any booth, blind or stall to be maintained unless all tables, chairs and occupants are kept open to full view from the main floor at the entrance of such licensed premises;
- E. To violate any of the terms of the license issued, or to sell bottled or draft beer for consumption on the premises, or to permit any beer to be consumed on the premises unless the license so permits;
- F. To be nude in a premises licensed under this chapter any person whether a patron, employee or performer;
- G. To cause or do any act in or about a licensed premises contrary to the provisions of the Alcoholic Beverage Control Act;
- H. To cause or do any act in or about a licensed premises contrary to federal, state or local criminal laws; or
- I. To permit a minor under the age of twenty-one (21) years to enter a licensed premises or to purchase, possess or consume an alcoholic beverage therein. (Ord. 264-00 (part); prior code § 5-3-11)

5.12.110 Inspection.

All licensed premises shall be subject to inspection by any officer, agent, or peace officer of the city, or the Utah State Department of Alcoholic Beverage Control, or the state or county health departments, and every licensee shall, at the request of said health department(s), furnish samples of beer offered for sale. (Prior code § 5-3-12)

5.12.120 Denial or revocation of beer license.

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A. A beer license may be denied or revoked for any good cause reasonably related to the health, safety or general welfare of the residents of West Bountiful City, including the violation of any federal, state or local law (including the provisions of this chapter).

B. Unless the mayor shall otherwise direct, the decision to deny or revoke a business license shall be made by the city recorder. Any such decision shall be in writing, including a simple statement of the reasons therefor. The denial or revocation shall take effect after the written decision has been filed in the records of the city recorder and a copy thereof has been mailed to the applicant or license holder at the address listed in that person's application. If the applicant or license holder was present when the decision to revoke or deny was made, or is otherwise personally aware of the decision, the denial or revocation shall be effective when the written decision is filed in the records of the city recorder.

C. Any person aggrieved by a decision to deny or revoke a beer license may appeal that decision by filing a written notice of appeal with the city recorder within fifteen (15) days of the effective date of the denial or revocation.

D. An appeal of a decision to deny or revoke a beer license shall be conducted as provided in Section 2.60.010 of these ordinances. (Prior code § 5-2-13)

Chapter 5.16 HORSE-DRAWN CARRIAGES

Sections:

5.16.010 Definitions.

5.16.020 Certificate of public convenience and necessity.

5.16.030 Types of carriages allowed.

5.16.040 Licensing for all certificated vehicles.

5.16.050 Compliance responsibility.

5.16.060 Revocation or suspension.

5.16.070 Driver licensing.

5.16.080 Carriage equipment and maintenance.

5.16.090 Conduct of drivers and operation of carriages.

5.16.100 Suitability of horses.

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5.16.110 Care of horses.

5.16.120 Violation--Penalty.

5.16.010 Definitions.

The following words and phrases, when used in this chapter, shall have the following meanings:

"Applicant" means the person signing an application either for a carriage business license or for a driver's license hereunder.

"Carriage" or **"horse-drawn carriage"** means any device designed to be drawn by horses in, upon, or by which any person is or may be transported or drawn upon a public way.

"Carriage business" means any person offering to transport another person for a valuable consideration and by means of a horse-drawn carriage.

"Carriage day" means the operating of a horse-drawn carriage for business on the streets of the city for at least one hour during any calendar day.

"Carriage stand" means that portion of a curb lane designated by the city for loading and unloading of passengers of horse-drawn carriages.

"Driver" means any person operating or in actual physical control of a horse-drawn carriage, or any person sitting in the driver's seat of such carriage with the intention of causing it to be moved by a horse.

"Holder" means any person holding a valid and unexpired certificate of convenience and necessity issued by the city.

"Horse" means an animal purely of the genus equus caballus, specifically excluding crosses with other genera.

"Stable" means any place or facility where one or more horses are housed or maintained.

"Veterinarian" means any person legally licensed to practice veterinary medicine.

"Work," with reference to a horse, means that the horse is out of the stable and presented as being available for pulling carriages; in harness; or pulling a carriage. (Prior code § 5-5-1)

5.16.020 Certificate of public convenience and necessity.

A. **Certificate Required.** No person shall operate or permit a horse-drawn carriage owned or controlled by such person to be operated, as a carriage for hire, upon the streets of the city, without first having obtained a certificate of public convenience and necessity from the city in accordance with this chapter.

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B. Certificate--Application Information. An application for the certificate of public convenience and necessity, verified under oath, shall show the experience of applicant in the transportation of passengers by horse-drawn carriages and shall show the specific route or routes within the city along which applicant proposes to operate one or more horse-drawn carriages.

C. Annual Operation. No certificates shall be issued or continued in operation unless the holder therein has paid an annual business regulatory fee according to established resolution governing business licenses. An additional fee per horse-drawn carriage authorized under a certificate of public convenience and necessity shall also be payable. This fee shall also be periodically set by resolution of the city council.

D. Holder shall operate its business in accordance with law and will save the city harmless from any and all liability for damages or injury arising by reason of the conduct or operation of its business. Holder shall also, prior to the issuance of a certificate of public convenience and necessity and continuously during the period of holder's operation, secure and keep in effect liability insurance with limits of not less than one hundred thousand dollars (\$100,000.00)/five hundred thousand dollars (\$500,000.00) bodily injury and fifty thousand dollars (\$50,000.00) property damage to protect the city and customers using holder's services from any claims for damages to persons or property. (Prior code § 5-5-2)

5.16.030 Types of carriages allowed.

A. All carriages shall be of types customarily known in the carriage industry as "vis-à-vis," "landau," "brougham," "victoria" and/or "rockaway," and shall meet all of the equipment, registration, and other requirements of this chapter before being used to transport customers. All horse-drawn carriages shall operate only within specified routes and/or quadrants as set forth herein.

B. Each holder may operate one training cart, i.e., a two-wheel, horse-drawn vehicle with extra long shafts, designed for training purposes. Training carts shall not be used for the transport of customers for hire and shall meet all of the equipment, registration and other requirements of this chapter and shall operate only within routes specifically authorized by the city as set forth herein. (Prior code § 5-5-3)

5.16.040 Licensing for all certificated vehicles.

A. A holder is required to have the total number of carriages authorized under such holder's certificate of convenience and necessity, and to obtain the license required for each and every carriage.

B. In the event the holder does not license the total number of carriages authorized by the certificate before February 15th of any year, such holder shall forfeit the right to commercially use any carriage not so licensed, unless such carriage is licensed within five days after written notice by the city, and that authority shall automatically revert to the city, and the certificate shall be modified to reflect the total number of vehicles actually licensed before February 15th of any year. Such forfeited right to operate any carriage may be reissued to any person;

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provided, however, it shall not be reissued except upon application as herein set forth and by a showing of public convenience and necessity as required by Section 5.16.020.

C. Nothing contained herein shall prohibit a holder from having carriages in excess of the number authorized under such holder's certificate for the purpose of replacement or substitution of an authorized carriage under repair, maintenance or breakdown; provided, however, any such carriage shall not be used as a carriage other than as a replacement or substitution as herein provided. (Prior code § 5-5-4)

5.16.050 Compliance responsibility.

The holder shall not be relieved of any responsibility for compliance with the provisions of this chapter, whether the holder pays salary, wages, or any other form of compensation to drivers. (Prior code § 5-5-5)

5.16.060 Revocation or suspension.

If any person to whom a license has been issued pursuant to this chapter commits a violation of this chapter, such license may be revoked or suspended according to the procedure provided for revocation or suspension of a business license issued by the city. (Prior code § 5-5-6)

5.16.070 Driver licensing.

A. It is unlawful for any person to operate or for a holder to permit any person to operate a carriage for hire or a training cart upon the streets of the city without such operator having first obtained and having then in force a current chauffeur's license valid in the state of Utah.

B. **License Display.** Every driver operating a carriage under this chapter shall keep his or her operator's license on his or her person while such driver is operating a carriage, and shall exhibit the license upon demand of any police officer, animal control officer, license inspector, or any authorized agent of the state of Utah Driver's License Division. (Prior code § 5-5-7)

5.16.080 Carriage equipment and maintenance.

A. **Carriage Inspection Prior to Licensing.** Prior to the use and operation of any carriage under the provisions of this chapter, the carriage shall be thoroughly examined and inspected by the police chief or his or her agent and found to comply with the specifications of subsection C of this section, and a certificate showing the same shall be furnished to the city.

B. **Periodic Inspections.** Every carriage operating under this chapter shall be inspected as provided in this section, or by the city police department at least once each year in order to make certain each carriage is being maintained in a safe and efficient operating condition in accordance with the following inspection requirements:

1. Each carriage shall be equipped with rear view mirrors, two electrified white lights visible for one thousand (1,000) feet to the front of the carriage, and two electrified red lights visible for one thousand (1,000) feet to the rear of the carriage;

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2. Each carriage shall be equipped with hydraulic or factory equipped mechanical brakes appropriate for the design of the particular carriage;

3. Each carriage shall be equipped with a slow moving vehicle emblem (red triangle) attached to the rear of the carriage in conformity with the slow vehicle emblem requirements of the state of Utah;

4. Each carriage shall permanently and prominently display the name and telephone number of the carriage business operating it on the rear portion of such carriage;

5. Each carriage shall be equipped with a device to catch horse manure falling to the pavement; and

6. Each carriage shall be maintained in a clean and sanitary condition. The carriage owner shall be required to pay an inspection fee each time the vehicle is inspected. The amount of this fee shall be set periodically by resolution of the city council.

C. This section shall be fully applicable to training carts, with the exception of subsection (B) (2) of this section regarding brakes. In addition, all training carts shall be clearly marked, on the rear portion of such cart, with the words: "CAUTION: HORSE IN TRAINING." (Prior code § 5-5-8)

5.16.090 Conduct of drivers and operation of carriages.

A. **Traffic Laws.** A driver operating a horse-drawn carriage shall be subject to all laws of the city pertaining to the driver of any vehicle.

B. **Lights.** The driver of each carriage in operation from one-half hour after sunset until one-half hour before sunrise, and in conditions of poor visibility, shall turn on the front and tail lights of the carriage and take any action necessary to make them operational. Electrified directional signs are required at all times.

C. **Speed.** The driver shall not permit the speed at which any horse-drawn carriage is driven to exceed a slow trot.

D. **Presence and Control.** No driver shall leave the carriage unattended in a public place.

E. **Number of Passengers.** No driver shall permit more than six adult passengers to ride in the carriage at one time, plus no more than two children under three years of age, if seated on the laps of adult passengers. At no time shall a carriage transport more passengers than it was designed to carry. No more than two passengers shall be permitted to be carried in a training cart, neither of which shall be a customer for hire.

F. **Passengers Restricted to Passenger Area.** No driver shall permit a passenger to ride on any part of the carriage while in motion, unless the passenger is seated inside the carriage.

G. **Appearance.** Drivers shall be neatly dressed and courteous in manner.

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H. Hours. Neither a licensee nor any driver shall operate or allow to be operated its carriages on the streets of the city during the hours of seven a.m. to nine a.m. and four p.m. to six p.m. except on Saturdays, Sundays and holidays.

I. Routes. The licensees and drivers shall operate horse-drawn carriages only upon certain streets within specified routes and/or quadrants and according to restrictions authorized by the chief of police of the city. In determining these routes, restrictions and/or quadrants, the chief of police shall seek to ensure safe and efficient movement of traffic within the city, and shall take into consideration the location of the streets therein, the expected traffic flow upon such streets, the history of traffic accidents upon such streets, the width of such streets, and any natural or manmade physical features of such streets which may be pertinent to the safe and efficient movement of traffic thereon.

1. As of the effective date of the ordinance codified in this chapter, there shall be established a quadrant for the operation of horse-drawn carriages which shall be bounded by the following streets: 400 North to 2200 North within east and west city limits, subject to route restrictions as set forth in the certificate of convenience and necessity. The maximum number of carriages which shall be allowed to operate within this quadrant shall be eight, subject to reallocation by the chief of police as provided herein above.

2. Licensees are barred from using streets which:

- a. Have a speed limit exceeding thirty-five (35) m.p.h. unless prior approval is obtained;
- b. Do not have stop signs or semaphores at major intersections; or
- c. Involve major arterials during the hours of seven a.m. to six p.m.

3. The authorized routes and termini shall be subject to amendment periodically by the city chief of police in order to ensure safe and efficient movement of traffic within the city, according to the guidelines set forth in this section. Advance charter tours may deviate from the route provided the driver stays on streets already approved for routes. A driver must receive prior permission of the chief of police to deviate from streets which have not been approved for routes or destinations which require use or crossing of streets designated as arterial or collector streets on the city's major street plan and official map.

J. Termini. Approved on-street route termini include those areas designated by the chief of police. Each holder shall obtain permission from the property owner of all off-street staging areas before using such areas. Upon request by the city police chief, a holder shall verify such permission to use such off-street staging area by submitting to the chief of police evidence of each written permission from the property owner.

Drivers shall not stop at designated bus stops, bus lanes, or any other restricted parking areas.

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K. Rates. All drivers must make available to any person, upon request, the rates for all tours and trips offered by the service. Once a vehicle has been hired for a designated route or termini, the driver may not accept additional passengers without the original contracting passenger's consent. (Ord. 264-00 (part); prior code § 5-5-9)

5.16.100 Suitability of horses.

A. Businesses Governed. In addition to the requirements of other applicable ordinances, all holders of a certificate of public convenience and necessity issued by the city for the transportation of passengers for hire by horse-drawn carriages shall be governed by the provisions of this chapter.

B. Identification Number. Each horse used to pull a carriage in the city shall be identified by a brand or mark in accordance with the Utah Livestock Brand and Anti-Theft Act which brand or mark uniquely identifies the horse thus marked. The identification brand or mark and description of each of the horses, including age, breed, sex, color and other identifying markings, shall be filed by the carriage horse business with the city recorder.

C. Examination Required. Every horse shall be examined prior to use in a horsedrawn carriage business, and every six months thereafter, by a veterinarian, at no expense to the city. The horse shall be examined and treated for internal parasites; problems with its teeth, legs, hoofs and shoes, or cardiovascular system; drug abuse; any injury, disease or deficiency observed by the veterinarian at the time of examination or previously; and the general physical condition and ability of the horse to perform the work required of it.

D. Certificate Required. No person shall cause or attempt to cause a horse to pull a carriage unless the horse has been certified pursuant to this section. The certification of the horse may be made subject to a condition, or otherwise limited by the veterinarian. The certificate shall be kept and be available for inspection by the city at the stable where the certified horse is kept, and a copy of the certificate shall be mailed to the city within five days from its date.

E. Certificate by Veterinarian--Term. After performing the physical examination required by subsection C of this section, the examining veterinarian may sign a certificate attesting that the horse is in good health. The certificate shall specifically identify each horse by its breed, sex, color and identifying markings and shall state, in the opinion of the veterinarian, the maximum load which each horse can reasonably be expected to draw safely without causing injury to the horse.

The certificate, if issued, shall be valid for a period of not more than six months from the date of signing.

F. Criteria for Determining Health. For purposes of this chapter, a horse shall be deemed to be in good health only if the horse:

1. **Strength.** Has, in the opinion of the veterinarian, flesh, muscle tone, and weight sufficient to perform the work for which the horse is used, including the pulling of carriages;

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2. **Immunization Against Anemia.** Has been immunized against equine infectious anemia, and such vaccination will be effective at all times during the next six months;

3. **Coggins Test.** The horse has been given a Coggins test with negative results on at least one certificate per year; and

4. **In General.** If, in the opinion of the veterinarian, in general good health and in all aspects physically fit to perform the work for which the horse is used, including the pulling of carriages.

G. Cancellation and Suspension of Certificate. A veterinarian shall cancel a certificate if the veterinarian learns of a condition which is reasonably expected to make the horse unfit for its work for a period of two weeks or more. If the horse appears to the veterinarian to be suffering from an injury or sickness from which it is expected to recover in less than two weeks, the veterinarian shall suspend the certificate for such horse for the time that the veterinarian expects will be necessary for the horse to recover. Upon written request of a holder for a hearing on such cancellation or suspension of a veterinarian's certificate, a hearing shall be held by the city within three working days of receipt of such request to determine whether the cancellation or suspension shall remain in effect. A canceled certificate shall be destroyed by the veterinarian or shall be clearly marked as canceled or invalid. Suspension of a certificate shall be clearly marked by the veterinarian in nonerasable ink on the original of the certificate.

H. Police or Animal Control Orders. A city police officer, health department officer, or animal control officer may order that a horse not be used to pull a carriage in the city and that the horse be returned to its stable, if the officer has cause to believe that the horse is suffering from any injury, ailment or other condition significantly affecting its ability to pull a carriage safely.

The order shall be effective only for so long as the officer specifies or until a hearing can be held regarding disqualification, or for three working days, whichever is shorter.

I. Disqualification. The mayor and city council members may, upon prior notice and hearing, disqualify a specific horse from use in pulling a carriage in the city if they find that the horse presents a hazard to public or passenger safety greater than the hazard posed by a normal horse, or that the horse is in any way unfit for the work of pulling carriages in the city. Before a horse may be disqualified, a hearing shall be held before the mayor and city council, at which the carriage business and the owner of the horse may appear and express themselves. At least three working days notice shall be given of the hearing to the carriage business using the horse. A disqualified horse shall not be used to pull a carriage within the city.

J. Accidents. In addition to any other requirements of law regarding reporting of vehicle accidents, the operator of a horsedrawn carriage shall report to the city police department any accident involving such carriage, and no such horse or carriage shall again be operated until such have been inspected by a police officer and a determination has been made by such officer that no removal order is necessary as provided by subsection K of this section.

K. Examination by the City. The city and its officials may, at any reasonable time, examine any horse owned by a carriage business or used by a carriage business to pull a carriage, or may

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have such a horse examined by a veterinarian. The cost of such examination shall initially be borne by the city. Such orders shall be in writing and may be given to the driver of a carriage to which the horse is hitched, or to a carriage business owning or having possession of the horse. If the examination determines that the horse is suffering from any injury, ailment or other condition significantly affecting its ability to pull a carriage in the city, the cost for such examination shall be reimbursed to the city by the certificate holder owning or operating such horse. (Prior code § 5-5-10)

5.16.110 Care of horses.

A. Physical Condition for Work. No person shall cause a horse to draw or to be harnessed to a carriage if:

1. **Certifiable.** The person attending to the horse knows, or reasonably should know that the horse, if then examined by a veterinarian, would probably not then be eligible for certification, or would be subject to cancellation or revocation of certification;

2. **Acute Ailment.** The horse has an open sore or wound, or is lame or appears to have any other injury, sickness or ailment, unless the person attending to the horse has in his or her possession a written statement signed by a veterinarian and stating that the horse is fit for pulling a carriage notwithstanding the injury, sickness or ailment;

3. **Hoofs.** The hoofs of the horse are not properly shod and trimmed, using rubber coated heel pads or open steel barium tip shoes to aid in the prevention of slipping.

Horses shall be shod and trimmed by an experienced, competent farrier at least every four to six weeks, or more frequently if necessary; or

4. **Coat.** The horse is not well groomed and/or has fungus, dandruff, or a poor or dirty coat.

B. Stables and Stalls. All stables used by a carriage business and the keeping of horses therein shall be subject to the provisions of all applicable city, county or state laws and ordinances.

C. Cruelty and Neglect Prohibited. No horse owned by or within the control of a carriage business shall be treated cruelly, harassed or neglected. A carriage business and its owner and managers are all individually responsible to take any action reasonably necessary to assure the humane care and treatment of the horses under their control. (Prior code § 5-5-11)

5.16.120 Violation--Penalty.

Any violation of any provision of this chapter shall be a Class B misdemeanor. (Prior code § 5-5-12)

Chapter 5.20 SEXUALLY-ORIENTED BUSINESSES

West Bountiful City Municipal Code

Sections:

- 5.20.010 Title for citation.
- 5.20.020 Purpose of provisions.
- 5.20.030 Application of provisions.
- 5.20.040 Definitions.
- 5.20.050 Obscenity and lewdness--Statutory provisions.
- 5.20.060 Location and zoning restrictions.
- 5.20.070 Business license required.
- 5.20.080 Exemptions from license requirements.
- 5.20.090 Legitimate artistic modeling.
- 5.20.100 Business categories--Number of licenses.
- 5.20.110 Employee licenses.
- 5.20.120 License--Application--Disclosures required.
- 5.20.130 License--Fees.
- 5.20.140 License--Bond.
- 5.20.150 License--Premises location and name.
- 5.20.160 License--Issuance conditions.
- 5.20.170 License--Term.
- 5.20.180 License--Notice of change of information.
- 5.20.190 License--Transfer limitations.
- 5.20.200 License--Display.
- 5.20.210 License--Statement in advertisements.
- 5.20.220 Regulations and unlawful activities.
- 5.20.230 Outcall services--Operation requirements.

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5.20.240 Adult business--Design of premises.

5.20.250 Semi-nude entertainment business--Design of premises.

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5.20.320 Existing businesses--Compliance time limits.

5.20.330 Violation--Injunction when.

5.20.340 Violation--License suspension or revocation.

5.20.350 Effect of license revocation.

5.20.360 Appeal procedures.

5.20.370 Violation--Penalty--Responsibility.

5.20.010 Title for citation.

The provisions codified in this chapter shall be known and may be referred to as the "sexually-oriented business and employee licensing ordinance." (Ord. 246-97 (part); prior code § 5-8-1)

5.20.020 Purpose of provisions.

It is the purpose and object of this chapter that the city establish reasonable and uniform regulations governing the time, place and manner of operation of sexually oriented businesses and their employees in the city. This chapter shall be construed to protect the governmental interests recognized by this chapter in a manner consistent with constitutional protections provided by the United States and Utah Constitutions. (Ord. 246-97 (part); prior code § 5-8-2)

5.20.030 Application of provisions.

This chapter imposes regulatory standards and license requirements on certain business activities which are characterized as sexually-oriented businesses, and certain employees of those businesses characterized as sexually-oriented business employees.

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Except where the context or specific provisions require, this chapter does not supersede or nullify any other related ordinances. (Ord. 246-97 (part); prior code § 5-8-3)

5.20.040 Definitions.

For the purpose of this chapter, the following words shall have the following meanings:

"Adult bookstore" or "adult video store" means a commercial establishment:

1. Which excludes minors from more than fifteen (15) percent of the retail floor or shelf space of the premises; or
2. Which, as one of its principal purposes, offers for sale or rental, for any form of consideration, any one or more of the following: books, magazines, periodicals or other printed matter; or photographs, films, motion pictures, video cassettes, or video reproductions, slides, or other visual representations, the central theme of which depicts or describes specified sexual activities or specified anatomical areas; or instruments, devices or paraphernalia which are designated for use in connection with specified sexual activities, except for legitimate medically recognized contraceptives.

"Adult business" means an adult motion picture theater, adult bookstore, or adult video store.

"Adult motion picture theater" means a commercial establishment which:

1. Excludes minors from the showing of two consecutive exhibitions (repeated showings of any single presentation shall not be considered a consecutive exhibition);
- or
2. As its principal business, shows, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions which are primarily characterized by the depiction or description of specified sexual activities or specified anatomical areas.

"Adult theater" means a theater, concert hall, auditorium, or similar commercial establishment which:

1. Holds itself out as such a business; or
2. Excludes minors from the showing of two consecutive exhibitions (repeated performance of the same presentation shall not be considered a consecutive exhibition); or
3. As its principal business, features persons who appear in live performances in a state of semi-nudity or which are characterized by the exposure of specified anatomical areas or by specified sexual activities.

"Employ" means hiring an individual to work for pecuniary or any other form of compensation, whether such person is hired on the payroll of the employer, as an independent contractor, as an agent, or in any other form of employment relationship.

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"Escort" means any person who, for pecuniary compensation, dates, socializes, visits, consorts with, or accompanies or offers to date, consort, socialize, visit or accompany another or others to or about social affairs, entertainment or places of amusement, or within any place of public or private resort or any business or commercial establishment or any private quarters.

"Escort" shall not be construed to include persons who provide business or personal services, such as licensed private nurses, aides for the elderly, or handicapped, social secretaries or similar service personnel whose relationship with their patron is characterized by a bona fide contractual relationship having a duration of more than twelve (12) hours and who provide a service not principally characterized as dating or socializing. "Escort" shall also not be construed to include persons providing services such as singing telegrams, birthday greetings, or similar activities characterized by appearances in a public place, contracted for by a party other than the person for whom the service is being performed and of a duration not longer than one hour.

"Escort service" means an individual or entity who, for pecuniary compensation, furnishes or offers to furnish escorts, or provides or offers to introduce patrons to escorts.

"Escort service runner" means any third person, not an escort, who, for pecuniary compensation, acts in the capacity of an agent or broker for an escort service, escort or patron by contacting or meeting with escort services, escorts or patrons at any location within the city, whether or not such third person is employed by such escort service, escort, patron or by another business, or is an independent contractor or self-employed.

"Nudity" means a state of dress in which the areola of the female breast or male or female genitals, pubic region, or anus are covered by less than the covering required in the definition of semi-nude.

"Operator" means the manager or other natural person principally in charge of a sexually-oriented business.

"Outcall services" means services of a type performed by a sexually-oriented business employee outside of the premises of the licensed sexually-oriented business, including but not limited to escorts, models, dancers and other similar employees.

"Patron" means any person who contracts with or employs any escort services or escort or the customer of any business licensed pursuant to this chapter.

"Pecuniary compensation" means any commission, fee, salary, tip, gratuity, hire, profit, reward or any other form of consideration.

"Person" means any person, unincorporated association, corporation, partnership, or other legal entity.

"Semi-nude" means a state of dress in which opaque clothing covers no more than the areola of the female breast; and the male or female genitals, pubic region, and anus shall be fully covered by an opaque covering no narrower than four inches wide in the front and five inches wide in the back, which shall not taper to less than one inch wide at the narrowest point.

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"Semi-nude dancing agency" means any person, agency, firm, corporation, partnership or any other entity or individual which furnishes, books or otherwise engages or offers to furnish, book or otherwise engage the service of a professional dancer licensed pursuant to this chapter for performance or appearance at a business licensed for adult theaters.

"Semi-nude entertainment business" means a business, including adult theater, where employees perform or appear in the presence of patrons of the business in a state of semi-nudity. A business shall also be presumed to be a semi-nude entertainment business if the business holds itself out as such a business.

"Sexually-oriented business" means semi-nude entertainment businesses, sexually-oriented outcall services, adult businesses, and semi-nude dancing agencies, as defined by this chapter.

"Sexually-oriented business employees" means those employees who work on the premises of a sexually-oriented business in activities related to the sexually-oriented portion of the business. This includes all managing employees, dancers, escorts, models and other similar employees, whether or not hired as employees, agents or as independent contractors. Employees shall not include individuals whose work is unrelated to the sexually-oriented portion of the business, such as janitors, bookkeepers and similar employees. Sexually-oriented business employees shall not include cooks, serving persons, and similar employees, except where they may be managers or supervisors of the business. All persons making outcall meetings under this chapter, including escorts, models, guards, escort runners, drivers, chauffeurs, and other similar employees, shall be considered sexually-oriented business employees.

"Specified anatomical areas" means the human male or female pubic area or anus with less than a full opaque covering, or the human female breast below a point immediately above the top of the areola, with less than full opaque covering.

"Specified sexual activities" means:

1. Acts of:
 - a. Masturbation,
 - b. Human sexual intercourse,
 - c. Sexual copulation between a person and a beast,
 - d. Fellatio,
 - e. Cunnilingus,
 - f. Bestiality,
 - g. Pederasty,
 - h. Buggery, or

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- i. Any anal copulation between a human male and another human male, human female, or beast;
- 2. Manipulating, caressing or fondling by any person of:
 - a. The genitals of a human,
 - b. The pubic area of a human,
 - c. The breast or breasts of a human female;
- 3. Flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of the one so clothed. (Ord. 246-97 (part): prior code § 5-8-4)

5.20.050 Obscenity and lewdness--Statutory provisions.

A. Notwithstanding anything contained in this chapter, nothing in this chapter shall be deemed to permit or allow the showing or display of any matter which is contrary to applicable federal or state statutes prohibiting obscenity.

B. Notwithstanding anything contained in this chapter, nothing in this chapter shall be deemed to permit or allow conduct or the showing or display of any matter which is contrary to the provisions of Section 9.04.030. Provided, however, that for the purpose of sexually-oriented businesses the definition of "private parts" shall be construed to mean "nudity" as defined in this chapter. (Ord. 246-97 (part): prior code § 5-8-5)

5.20.060 Location and zoning restrictions.

It is unlawful for any sexually-oriented business to do business at any location within the city not zoned for such business.

Sexually-oriented businesses licensed as adult businesses or semi-nude entertainment businesses pursuant to this chapter shall only be allowed in areas zoned for their use pursuant to Title 17 of this code. (Ord. 246-97 (part): prior code § 5-8-6)

5.20.070 Business license required.

It is unlawful for any person to operate a sexually-oriented business, as specified herein, without first obtaining a general business license and a sexually-oriented business license. The sexually-oriented business license shall specify the type of business for which it is obtained. (Ord. 246-97 (part): prior code § 5-8-7)

5.20.080 Exemptions from license requirements.

The provisions of this chapter shall not apply to any sex therapist or similar individual licensed by the state to provide bona fide sexual therapy or counseling, licensed medical practitioner, licensed nurse,

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psychiatrist, psychologist, nor shall it apply to any educator licensed by the state for activities in the classroom. (Ord. 246-97 (part): prior code § 5-8-8)

5.20.090 Legitimate artistic modeling.

A. The city does not intend to unreasonably or improperly prohibit legitimate modeling which may occur in a state of nudity for purposes protected by the First Amendment or similar state protections. The city does intend to prohibit prostitution and related offenses occurring under the guise of nude modeling.

Notwithstanding the provisions of Section 5.20.220(K), a licensed outcall employee may appear in a state of nudity before a customer or patron, providing that a written contract for such appearance was entered into between the customer or patron and the employee and signed at least twenty-four (24) hours before the nude appearance. All of the other applicable provisions of this chapter shall still apply to such nude appearance.

B. In the event of a contract for nude modeling or appearance signed more than forty-eight (48) hours in advance of the modeling or appearance, the individual to appear nude shall not be required to obtain a license pursuant to this chapter. During such unlicensed nude appearance, it is unlawful to:

1. Appear nude or semi-nude in the presence of persons under the age of eighteen (18);
2. Allow, offer or agree to any touching of the contracting party or other person by the individual appearing nude;
3. Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or committing activities harmful to a minor;
4. Allow, offer, commit or agree to any sex act as validly defined by city ordinances or state statute;
5. Allow, offer, agree or permit the contracting party or other person to masturbate in the presence of the individual contracted to appear nude;
6. Allow, offer or agree for the individual appearing nude to be within five feet of any other person while performing or while nude or semi-nude. (Ord. 246-97(part): prior code § 5-8-9)

5.20.100 Business categories--Number of licenses.

A. It is unlawful for any business premises to operate or be licensed for more than one category of sexually-oriented business, except that a business may have a license for both outcall services and a semi-nude dancing agency on the same premises.

B. The categories of sexually-oriented businesses are:

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1. Outcall services;
2. Adult businesses;
3. Semi-nude entertainment businesses;
4. Semi-nude dancing agency. (Ord. 246-97 (part): prior code § 5-8-10)

5.20.110 Employee licenses.

It is unlawful for any sexually-oriented business to employ or for any individual to be employed by a sexually-oriented business in the capacity of a sexually-oriented business employee, unless that employee first obtains a sexually-oriented business employee license. (Ord. 246-97 (part): prior code § 5-8-11)

5.20.120 License--Application--Disclosures required.

Before any applicant may be licensed to operate a sexually-oriented business or as a sexually-oriented business employee pursuant to this chapter, the applicant shall submit, on a form to be supplied by the city license authority, the following:

A. The correct legal name of each applicant, corporation, partnership, limited partnership, or entity doing business under an assumed name;

B. If the applicant is a corporation, partnership or limited partnership, or individual or entity doing business under an assumed name, the information required below for individual applicants shall be submitted for each partner and each principal of an applicant, and for each officer, director and any shareholder (corporate or personal) of more than ten (10) percent of the stock of any applicant. Any holding company, or any entity holding more than ten (10) percent of an applicant, shall be considered an applicant for purposes of disclosure under this chapter:

1. The share holder disclosure requirements above shall only be applicable for outcall service licenses;

C. All corporations, partnerships or noncorporate entities included on the application shall also identify each individual authorized by the corporation, partnership or noncorporate entity to sign the checks for such corporation, partnership, or noncorporate entity;

D. For all applicants or individuals, the application must also state:

1. Any other names or aliases used by the individual,
2. The age, date and place of birth,
3. Height,

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4. Weight,
5. Color of hair,
6. Color of eyes,
7. Present business address and telephone number,
8. Present residence and telephone number,
9. Utah drivers license or identification number, and
10. Social security number;

E. Acceptable written proof that any individual is at least eighteen (18) years of age;

F. Attached to the form, as provided above, two color photographs of the applicant clearly showing the individual's face and the individual's fingerprints on a form provided by the police department. For persons not residing in the city, the photographs and fingerprints may be on a form from the law enforcement jurisdiction where the person resides. Fees for the photographs and fingerprints shall be paid by the applicant directly to the issuing agency;

G. For any individual applicant required to obtain a sexually-oriented business employee license as an escort or a semi-nude entertainer, a certificate from the Salt Lake city-county health department, stating that the individual has, within thirty (30) days immediately preceding the date of the original or renewal application, been examined and found to be free of any contagious or communicable diseases;

H. A statement of the business, occupation, or employment history of the applicant for three years immediately preceding the date of the filing of the application;

I. A statement detailing the license or permit history of the applicant for the five-year period immediately preceding the date of the filing of the application, including whether such applicant previously operating or seeking to operate, in this or any other county, city, state or territory, has ever had a license, permit or authorization to do business denied, revoked or suspended, or has had any professional or vocational license or permit denied, revoked or suspended. In the event of any such denial, revocation or suspension, state the date, the name of the issuing or denying jurisdiction, and state in full the reasons for the denial, revocation or suspension. A copy of any order of denial, revocation or suspension shall be attached to the application;

J. All criminal convictions or pleas of nolo contendere, except those which have been expunged, and the disposition of all such arrests for the applicant, individual, or other entity subject to disclosure under this chapter, for five years prior to the date of the application. This disclosure shall include identification of all ordinance violations, excepting minor traffic offenses (any traffic offense designated as a felony shall not be construed as a minor traffic offense), stating the date, place, nature of each conviction or plea of nolo contendere, and sentence of each

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conviction or other disposition, identifying the convicting jurisdiction and sentencing court, and providing the court identifying case numbers or docket numbers.

Application for a sexually-oriented business or employee license shall constitute a waiver of disclosure of any criminal conviction or plea of nolo contendere for the purposes of any proceeding involving the business or employee license;

K. In the event the applicant is not the owner of record of the real property upon which the business or proposed business is or is to be located, the application must be accompanied by a notarized statement from the legal or equitable owner of the possessory interest in the property specifically acknowledging the type of business for which the applicant seeks a license for the property. In addition to furnishing such notarized statement, the applicant shall furnish the name, address and phone number of the owner of record of the property, as well as the copy of the lease or rental agreement pertaining to the premises in which the service is or will be located;

L. A description of the services to be provided by the business, with sufficient detail to allow reviewing authorities to determine what business will be transacted on the premises, together with a schedule of usual fees for services to be charged by the licensee, and any rules, regulations or employment guidelines under or by which the business intends to operate. This description shall also include:

1. The hours that the business or service will be open to the public, and the methods of promoting the health and safety of the employees and patrons and preventing them from engaging in illegal activity,
2. The methods of supervision preventing the employees from engaging in acts of prostitution or other related criminal activities,
3. The methods of supervising employees and patrons to prevent employees and patrons from charging or receiving fees for services or acts prohibited by this chapter or other statutes or ordinances,
4. The methods of screening employees and customers in order to promote the health and safety of employees and customers and prevent the transmission of disease, and prevent the commission of acts of prostitution or other criminal activity.

It is unlawful to knowingly submit false or materially misleading information on or with a sexually-oriented business license application or to fail to disclose or omit information for the purpose of obtaining a sexually-oriented business or employee license. (Ord. 246-97 (part): prior code § 5-8-12)

5.20.130 License--Fees.

Each applicant for a sexually-oriented business or employee license shall be required to pay regulatory license fees as set forth in the consolidated fee schedule. An application is not complete until all appropriate fees have been paid. (Ord. 246-97 (part): prior code § 5-8-13)

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5.20.140 License--Bond.

Each application for a sexually-oriented business license shall post, with the city treasurer, a cash or corporate surety bond payable to West Bountiful City in the amount of two thousand dollars (\$2,000.00). Any fines assessed against the business, officers or managers for violations of city ordinances shall be taken from this bond if not paid in cash within ten (10) days after notice of the fine, unless an appeal is filed as provided by this chapter. In the even the funds are drawn against the cash or surety bond to pay such fines, the bond shall be replenished to two thousand dollars within fifteen (15) days of the date of notice of any draw against it. (Ord. 246-97 (part): prior code § 5-8-14)

5.20.150 License--Premises location and name.

A. It is unlawful to conduct business under a license issued pursuant to this chapter at any location other than the licensed premises. Any location to which telephone calls are automatically forwarded by such business shall require a separate license.

B. It is unlawful for any sexually-oriented business to do business in the city under any name other than the business name specified in the application. (Ord. 246-97 (part): prior code § 5-8-15)

5.20.160 License--Issuance conditions.

The business license administrator shall approve the issuance of a license to the applicant within thirty (30) days after receipt of a completed application, unless the official finds one or more of the following:

A. The applicant is under eighteen (18) years of age;

B. The applicant is overdue in payment to the city of taxes, fees, fines or penalties assessed against the applicant or imposed on the applicant in relation to a sexually-oriented business;

C. The applicant has falsely answered a material question or request for information as authorized by this chapter;

D. The applicant has violated a provision of this chapter or similar provisions found in statutes or ordinances from any jurisdiction within two years immediately preceding the application; a criminal conviction for a violation of a provision of this chapter or similar provisions from any jurisdiction, whether or not it is being appealed, is conclusive evidence of a violation, but a conviction is not necessary to prove a violation;

E. The premises to be used for the business have been disapproved by the Davis County health department, the fire marshal, the police department, the building officials, or the zoning officials as not being in compliance with applicable laws and ordinances of the city. If any of the foregoing reviewing agencies cannot complete their review within the thirty (30) day approval or denial period, the agency or department may obtain from the city business license administrator an extension of time of no more than fifteen (15) days for their review. The total time for the city to approve or deny a license shall not exceed forty-five (45) days from the receipt of a completed application and payment of all fees. Businesses located outside of the

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corporate boundaries of the city, but requiring a license under this chapter, may be denied a license pursuant to this chapter if the business does not have a valid business license to conduct business at the business location from the appropriate jurisdiction for that location:

1. Upon receipt of an application, all departments required to review the application shall determine within seven days whether or not the application is incomplete in items needed for processing.

Incomplete applications shall immediately be returned to the applicant with a specification of the items which are incomplete,

2. The time for processing applications specified in this section shall begin to run from the receipt of a complete application,

3. In the event that a license for semi-nude entertainment, semi-nude dancing agencies, adult businesses, or semi-nude entertainment businesses has not been disapproved within thirty (30) days or the forty-five (45) days allowed after an extension, the city shall issue the license pending completion of the city's review,

4. Any license issued pursuant to subsection (E)(3) of this section may be revoked by the city, pursuant to the revocation procedures provided for herein, if the completed review determines that the license should have been denied;

F. The required license fees have not been paid;

G. All applicable sales and use taxes have not been paid;

H. An applicant for the proposed business is in violation of or not in compliance with this chapter or similar provisions found in statutes or ordinances from any jurisdiction;

I. An applicant has been convicted or pled nolo contendere to a crime:

1. Involving prostitution; exploitation of prostitution; aggravated promotion of prostitution; aggravated exploitation of prostitution; solicitation of sex acts; sex acts for hire; compelling prostitution; aiding prostitution; sale, distribution or display of material harmful to minors; sexual performance by minors; possession of child pornography; lewdness; indecent exposure; any crime involving sexual abuse or exploitation of a child; sexual assault or aggravated sexual assault; rape; forcible sodomy; forcible sexual abuse; incest; harboring a runaway child; criminal attempt, conspiracy or solicitation to commit any of the foregoing offenses or offenses involving similar elements from any jurisdiction, regardless of the exact title of the offense; for which:

- a. Less than two years have elapsed from the date of conviction, if the conviction is of a misdemeanor offense, or less than five years if the convictions are of two or more misdemeanors within the five years, or

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b. Less than five years have elapsed from the date of conviction, if the offense is of a felony,

2. The fact that a conviction is being appealed shall have no effect on the disqualification pursuant to this section. (Ord. 246-97 (part): prior code § 5-8-16)

5.20.170 License--Term.

Sexually-oriented business and employee licenses issued pursuant to this chapter shall be valid from the date of issuance through January 1st of each succeeding year. The license fees required under the consolidated fee schedule shall not be prorated for any portion of a year, but shall be paid in full for whatever portion of the year the license is applied for. (Ord. 246-97 (part): prior code § 5-8-17)

5.20.180 License--Notice of change of information.

Any change in the information required to be submitted under this chapter for either a sexually-oriented business license or sexually-oriented business employee license shall be given, in writing, to the business license administrator and the police department within fourteen (14) days after such change. (Ord. 246-97 (part): prior code § 5-8-18)

5.20.190 License--Transfer limitations.

Sexually-oriented business licenses granted under this chapter shall not be transferable. It is unlawful for a license held by an individual, a corporation, partnership, or other noncorporate entity to transfer any part of said license. (Ord. 264-00 (part): Ord. 246-97 (part): prior code § 5-8-19)

5.20.200 License--Display.

It is unlawful for any sexually-oriented business location within the boundaries of the city to fail to display the license granted pursuant to this chapter in a prominent location within the business premises. It is unlawful for any individual licensed pursuant to this chapter to fail to carry, at all times while engaged in licensed activities within the corporate boundaries of the city, their employee license on their person. If the individual is nude, such license shall be visibly displayed within the same room the employee is performing.

When requested by police, city licensing or other enforcement personnel or health official, it is unlawful to fail to show the appropriate licenses while engaged in licensed activities within the corporate boundaries of the city. (Ord. 246-97 (part): prior code § 5-8-20)

5.20.210 License--Statement in advertisements.

It is unlawful for any advertisement by the sexually-oriented business or employee to fail to state that the business or employee is licensed by the city, and shall include the city license number. (Ord. 246-97 (part): prior code § 5-8-21)

5.20.220 Regulations and unlawful activities.

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It is unlawful for any sexually-oriented business or sexually-oriented business employee to:

- A. Allow persons under the age of eighteen (18) years on the licensed premises, except that in adult businesses which exclude minors from less than all of the business premises, minors shall not be permitted in excluded areas;
- B. Allow, offer or agree to conduct any outcall business with persons under the age of eighteen (18) years;
- C. To allow, offer or agree to allow any alcohol to be stored, used or consumed on or in the licensed premises;
- D. Allow the outside door to the premises to be locked while any customer is in the premises;
- E. Allow, offer or agree to gambling on the licensed premises;
- F. Allow, offer or agree to any sexually-oriented business employee touching or being touched by any patron or customer; except that outcall employees and customers may touch, except that any touching of specified anatomical areas, whether clothed or unclothed, is prohibited;
- G. Allow, offer or agree to illegal possession, use, sale or distribution of controlled substances on the licensed premises;
- H. Allow sexually-oriented business employees to possess, use, sell or distribute controlled substances while engaged in the activities of the business;
- I. Allow, offer or agree to commit prostitution, solicitation of prostitution, solicitation of a minor, or committing activities harmful to a minor to occur on the licensed premises or, in the event of an outcall employee or business, the outcall employee committing, offering or agreeing to commit prostitution, attempting to commit prostitution, soliciting prostitution, soliciting a minor, or committing activities harmful to a minor;
- J. Allow, offer, commit or agree to any specified sexual activity as validly defined by city ordinances or state statute in the presence of any customer or patron;
- K. Allow, offer or agree to any outcall employee appearing before any customer or patron in a state of nudity;
- L. Allow, offer or agree to allow a patron or customer to masturbate in the presence of the sexually-oriented business employee or on the premises of a sexually-oriented business.
- M. Allow, offer or agree to commit an act of lewdness as defined in this title. (Ord. 246-97 (part): prior code § 5-8-22)

5.20.230 Outcall services--Operation requirements.

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It is unlawful for any business or employee providing outcall services contracted for in the city to fail to comply with the following requirements:

A. All businesses licensed to provide outcall services pursuant to this chapter shall provide to each patron a written contract in receipt of pecuniary compensation for services. The contract shall clearly state the type of services to be performed, the length of time such services shall be performed, the total amount such services shall cost the patron, and any special terms or conditions relating to the services to be performed. The contract need not include the name of the patron. The business licensee shall keep and maintain a copy of each written contract entered into pursuant to this section for a period not less than one year from the date of provision of services thereunder. The contracts shall be numbered and entered into a register listing the contract number, date, names of all employees involved in the contract, and pecuniary compensation paid.

B. All outcall businesses licensed pursuant to this chapter shall maintain an open office or telephone at which the licensee or licensee's designated agent may be personally contacted during all hours outcall employees are working. The address and phone number of the license location shall appear and be included in all patron contracts and published advertisements. For outcall businesses which premises are licensed within the corporate limits of the city, private rooms or booths where the patrons may meet with the outcall employee shall not be provided at the open office or any other location by the service, nor shall patrons meet outcall employees at the business premises.

C. Outcall services shall not advertise in such a manner that would lead a reasonably prudent person to conclude that specified sexual activities would be performed by the outcall employee.

D. All employees of outcall services who provide outcall services within the city shall be licensed in accordance with this chapter, regardless of the primary location of the business. (Ord. 246-97 (part): prior code § 5-8-23)

5.20.240 Adult business--Design of premises.

A. In addition to the general requirements of disclosure for a sexually-oriented business, any applicant for a license as an adult business shall also submit a diagram, drawn to scale, of the premises of the license. The design and construction, prior to granting a license or opening for business, shall conform to the following:

1. The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms.
2. Restrooms may not contain any video reproduction equipment or any of the business merchandise. Signs shall be posted requiring only one person being allowed in the restroom per stall, and only one person in any stall at a time, and requiring that patrons shall not be allowed access to manager's station areas.

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3. For businesses which exclude minors from the entire premises, all windows, doors and other apertures to the premises shall be darkened or otherwise constructed to prevent anyone outside the premises from seeing the inside of the premises. Businesses which exclude minors from less than all of the premises shall be designed and constructed so that minors may not see into the area from which they are excluded.

4. The diagram required shall not necessarily be a professional engineer's or architect's blueprint; however, the diagram must show marked internal dimensions, all overhead lighting fixtures, and ratings for illumination capacity.

B. It shall be the duty of the licensee and the licensee's employees to insure that the views from the manager's station in subsection (A)(1) of this section remain unobstructed by any doors, walls, merchandise, display racks, or any other materials at all times that any patron is present in the premises, and to insure that no patron is permitted access to any area of the premises which has been designated as an area in which patrons will not be permitted.

C. The premises shall at all times be equipped and operated with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one footcandle, measured at floor level. It shall be the duty of the licensee and the licensee's employees present on the premises to insure that the illumination described above is maintained at all times that any patron is present in the premises. (Ord. 246-97 (part); prior code § 5-8-24)

5.20.250 Semi-nude entertainment business--Design of premises.

A. It is unlawful for business premises licensed for semi-nude entertainment to:

1. Permit a bed, sofa, mattress or similar item in any room on the premises, except that a sofa may be placed in a reception room open to the public or in any office to which patrons are not admitted, and except that in an adult theater such items may be on the stage as part of a performance;

2. Allow any door on any room used for the business, except for the door to an office to which patrons shall not be admitted, outside doors, and restroom doors to be lockable from the inside;

3. Provide any room in which the employee or employees and the patron or patrons are alone together without a separation by a solid physical barrier at least three feet high and six inches wide. The patron or patrons shall remain on one side of the barrier and the employee or employees shall remain on the other side of the barrier.

B. Adult theaters shall also require that the performance area shall be separated from the patrons by a minimum of three feet, which separation shall be delineated by a physical barrier at least three feet high. (Ord. 246-97 (part); prior code § 5-8-25)

5.20.260 Semi-nude entertainment business--Location restriction.

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It is unlawful for any business licensed for semi-nude entertainment to be located within three hundred thirty (330) feet of a business licensed for the sale or consumption of alcohol. (Ord. 246-97 (part): prior code § 5-8-26)

5.20.270 Alcohol prohibited.

A. It is unlawful for any business licensed pursuant to this chapter to allow the sale, storage, supply or consumption of alcoholic beverages on the premises.

B. It is unlawful for any person to possess or consume any alcoholic beverage on the premises of any sexually-oriented business. (Ord. 246-97 (part): prior code § 5-8-27)

5.20.280 Semi-nude dancing agencies.

A. It is unlawful for any individual or entity to furnish, book or otherwise engage the services of a professional dancer, model or performer to appear in a state of semi-nudity for pecuniary compensation in or for any semi-nude entertainment business or adult theater licensed pursuant to this chapter, unless such agency is licensed pursuant to this chapter.

B. It is unlawful for any individual or entity to furnish, book or otherwise engage or permit any person to perform as a professional dancer, model, or performer in a state of semi-nudity or nudity, either gratuitously or for compensation, in or for any business licensed pursuant to this chapter, unless such person is licensed pursuant to this chapter. (Ord. 246-97 (part): prior code § 5-8-28)

5.20.290 Performers--Prohibited activities.

It is unlawful for any professional dancer, model or performer, while performing in any business licensed pursuant to this chapter, to:

A. Touch in any manner any other person;

B. Throw any object or clothing off the stage area;

C. Accept any money, drink, or any other object directly from any person;

D. Allow another person to touch such performer or to place any money or object on the performer or within the costume or person of the performer; or

E. Place anything within the costume or adjust or move the costume while performing so as to render the performer in a state of nudity. (Ord. 246-97 (part): prior code § 5-8-29)

5.20.300 Patrons--Prohibited activities.

It is unlawful for any person or any patron of any business to touch in any manner any performer; to place any money or object on or within the costume or person of any performer; or to give or offer to give to any such performer any drinks, money or object while such performer is performing; except that

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money may be placed on the stage, which shall not be picked up by the performer except by hand. (Ord. 246-97 (part): prior code § 5-8-30)

5.20.310 Nudity--Defenses to prosecution.

It is a defense to prosecution or violation under this chapter that a person appearing in a state of nudity did so in a modeling class operated:

- A. By a proprietary school licensed by the state, or a college, junior college, or university supported entirely or partly by taxation;
- B. By a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation. (Ord. 246-97 (part): prior code § 5-8-31)

5.20.320 Existing businesses--Compliance time limits.

- A. The provisions of this chapter shall be applicable to all persons and businesses described herein, whether the herein described activities were established before or after the effective date of the provisions codified in this chapter and regardless of whether such persons and businesses are currently licensed to do business in the city.
 - 1. All such persons and businesses requiring outcall service licenses shall have forty-five (45) days from the effective date of the ordinance codified in this chapter, or until their current license expires, whichever is first in time, to comply with the provisions of this chapter.
 - 2. All semi-nude dancing agency licenses shall have seventy-five (75) days from the effective date of the ordinance codified in this chapter, or until their license must be renewed, whichever is first, to comply with the provisions of this chapter.
 - 3. All adult businesses and semi-nude entertainment businesses shall have one hundred thirty-five (135) days from the effective date of the ordinance codified in this chapter, or until their current license must be renewed, whichever is first, to comply with the provisions of this chapter.
- B. For the year 1997, all businesses required by this chapter to be licensed as sexually-oriented businesses shall be credited against the fees required in the consolidated fee schedule with the regulatory license fees paid for the current 1997 license. (Ord. 246-97 (part): prior code § 5-8-32)

5.20.330 Violation--Injunction when.

An entity or individual who operates or causes a sexually-oriented business to be operated without a valid license, or who employs or is employed as an employee of a sexually-oriented business, or who operates such a business or functions as such an employee in violation of the provisions of this chapter

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is subject to a suit for injunction in addition to the civil and criminal violations provided herein, and any other remedy available at law or in equity. (Ord. 246-97 (part): prior code § 5-8-33)

5.20.340 Violation--License suspension or revocation.

A. The city may issue a notice suspending or revoking a sexually-oriented business or employee license granted under this chapter if a licensee or an employee of the licensee has:

1. Violated or is not in compliance with this chapter;
2. Refused to allow any inspection of the premises of the sexually-oriented business specifically authorized by this chapter or by any other statute or ordinance;
3. Failed to replenish the cost bond as provided in this chapter (such a suspension shall extend until the bond has been replenished);
4. Given materially false or misleading information in obtaining the license;
5. Knowingly operated the sexually-oriented business or worked under the employee license during the period when the business licensee or employee licensee's license was suspended;
6. A licensee has committed an offense which would be grounds for denial of a license for which the time period required has not elapsed;
7. On two or more occasions within a twelve (12) month period, a person or persons committed in or on, or solicited for on the licensed premises, or an outcall employee solicited or committed on or off the premises, an offense which would be grounds for denial of a license for which a conviction has been obtained, and the person or persons were employees, whether or not licensed, of the sexually-oriented business at the time the offenses were committed;
8. A licensee is delinquent in payment to the city for ad valorem taxes, or sales taxes related to the sexually-oriented business.

B. Suspension or revocation shall take effect within fifteen (15) days of the issuance of notice, unless an appeal is filed as provided by this chapter.

C. The fact that a conviction is being appealed shall have no effect on the revocation of the license. (Ord. 246-97 (part): prior code § 5-8-34)

5.20.350 Effect of license revocation.

When a license issued pursuant to this chapter is revoked, the revocation shall continue for one year from its effective date, and the licensee shall not be issued a sexually-oriented business or employee license for one year from the date of such revocation. (Ord. 246-97 (part): prior code § 5-8-35)

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5.20.360 Appeal procedures.

The denial, suspension or revocation of any license issued pursuant to this chapter may be appealed as set forth in Section 5.04.110. (Ord. 246-97 (part): prior code § 5-8-36)

5.20.370 Violation--Penalty--Responsibility.

A. In addition to revocation or suspension of a license, as provided in this chapter, each violation of this chapter shall, upon citation by the city business license administrator, require the licensee to pay a civil penalty in the amount of five hundred dollars (\$500.00). Such fines shall be deducted from the cost bond posted pursuant to this chapter, unless paid within ten (10) days of notice of the fine or the final determination after any appeal. In addition to the civil fines provided in this chapter, the violation of any provision of this chapter shall be a Class B misdemeanor. Each day of a violation shall be considered a separate offense.

B. Every act or omission by an employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the sexually-oriented business licensee and/or operator, if such act or omission occurs either with the authorization, knowledge, or approval of the licensee and/or operator, or as a result of the licensee's and/or operator's negligent failure to supervise the conduct of the employee, and the sexually-oriented business licensee shall be punishable for such act or omission in the same manner as if the licensee committed the act or caused the omission.

C. A sexually-oriented business licensee and/or operator shall be responsible for the conduct of all employees while on the licensed premises, and any act or omission of any employee constituting a violation of the provisions of this chapter shall be deemed the act or omission of the licensee and/or operator for the purposes of determining whether the licensee's license shall be revoked, suspended or renewed. (Ord. 246-97 (part): prior code § 5-8-37)

Chapter 5.24 TELECOMMUNICATIONS RIGHTS-OF-WAY FRANCHISES

Sections:

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5.24.170 Federal, state and city jurisdiction.

5.24.010 Declaration of finding and intent.

A. Findings Regarding Rights-of-Way. The city of West Bountiful finds that the rights-of-way within the city:

1. Are critical to the travel and transport of persons and property in the business and social life of the city;
2. Are intended for public uses and must be managed and controlled consistent with that intent;
3. Can be partially occupied by the facilities of utilities and other public service entities delivering utility and public services rendered for profit, to the enhancement of the health, welfare and general economic well-being of the city and its citizens; and
4. Are a unique and physically limited resource requiring proper management to maximize the efficiency and to minimize the costs to the taxpayers of the foregoing uses and to minimize the inconvenience to and negative effects upon the public from such facilities' construction, placement, relocation and maintenance in the rights-of-way.

B. Finding Regarding Compensation. The city finds that the city should receive fair and reasonable compensation for use of the rights-of-way.

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C. Finding Regarding Local Concern. The city finds that while telecommunications systems are in part an extension of interstate commerce, their operations also involve rights-of-way, municipal franchising, and vital business and community service, which are of local concern.

D. Finding Regarding Promotion of Telecommunications Services. The city finds that it is in the best interests of its taxpayers and citizens to promote the rapid development of telecommunications services, on a nondiscrimination basis, responsive to community and public interest, and to assure availability for municipal, educational and community services.

E. Findings Regarding Franchise Standards. The city finds that it is in the interests of the public to franchise and to establish standards for franchising providers in a manner that:

1. Fairly and reasonably compensates the city on a competitively neutral and nondiscriminatory basis as provided herein;
2. Encourages competition by establishing terms and conditions under which providers may use the rights-of-way to serve the public;
3. Fully protects the public interests and the city from any harm that may flow from such commercial use of rights-of-way;
4. Protects the police powers and rights-of-way management authority of the city, in a manner consistent with federal and state law;
5. Otherwise protects the public interests in the development and use of the city infrastructure;
6. Protects the public's investment in improvements in the rights-of-way; and
7. Ensures that no barriers to entry of telecommunications providers are created and that such franchising is accomplished in a manner that does not prohibit or have the effect of prohibiting telecommunication services, within the meaning of the Telecommunications Act of 1996 ("Act") [P.L. No. 104-104].

F. Power to Manage Rights-of-Way. The city adopts the telecommunications ordinance codified in this chapter pursuant to its power to manage the rights-of-way, pursuant to common law, the Utah Constitution and statutory authority, and receive fair and reasonable, compensation for the use of rights-of-way by providers as expressly set forth by Section 253 of the Act. (Ord. 248-97 § 1.1)

5.24.020 Scope.

This chapter shall provide the basic local scheme for providers of telecommunications services and systems that require the use of the rights-of-way, including providers of both the system and service, those providers of the system only, and those providers who do not build the system but who only provide services. This chapter shall apply to all future providers and to all providers in the city prior to

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the effective date of the ordinance codified in this chapter, whether operating with or without a franchise as set forth in Section 5.24.170(B). (Ord. 248-97 § 1.2)

5.24.030 Excluded activity.

A. Cable TV. This chapter shall not apply to cable television operators otherwise regulated by separate ordinance or agreement.

B. Wireless Services. This chapter shall not apply to personal wireless service facilities.

C. Provisions Applicable to Excluded Providers. Providers excused by other law that prohibits the city from requiring a franchise shall not be required to obtain a franchise, but all of the requirements imposed by this chapter through the exercise of the city's police power and not preempted by other law shall be applicable. (Ord. 248-97 § 1.3)

5.24.040 Definitions.

For purposes of this chapter, the following terms, phrases, words and their derivatives shall have the meanings set forth in this section, unless the context clearly indicates that another meaning is intended. Words used in the present tense include the future tense, words in the single number include the plural number, words in the plural number include the singular. The word "shall" and "will" are mandatory, and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

"Application" means the process by which a provider submits a request and indicates a desire to be granted a franchise to utilize the rights-of-way of all, or a part, of the city.

An application includes all written documentation, verbal statements and representations, in whatever form or forum, made by a provider to the city concerning:

the construction of a telecommunications system over, under, on or through the rights-of-way; the telecommunications services proposed to be provided in the city by a provider; and any other matter pertaining to a proposed system or service.

"City" means West Bountiful City, Utah.

"Completion date" means the date that a provider begins providing services to customers in the city.

"Construction costs" means all costs of constructing a system, including make ready costs, other than engineering fees, attorneys or accountants fees, or other consulting fees.

"Control" or **"controlling interest"** means actual working control in whatever manner exercised, including, without limitation, working control through ownership, management, debt instruments or negative control, as the case may be, of the system or of a provider. A rebuttable presumption of the existence of control or a controlling interest shall arise from the beneficial ownership, directly or indirectly, by any person, or group of persons acting in concert, of more than twenty-five (25) percent of any provider (which person or group of persons is hereinafter referred to as "controlling person").

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"Control" or "controlling interest" as used herein may be held simultaneously by more than one person or group of persons.

"**FCC**" means the Federal Communications Commission, or any successor thereto.

"**Franchise**" means the rights and obligation extended by the city to a provider to own, lease, construct, maintain, use or operate a system in the rights-of-way within the boundaries of the city. Any such authorization, in whatever form granted, shall not mean or include: (i) any other permit or authorization required for the privilege of transacting and carrying on a business within the city required by the ordinances and laws of the city; (ii) any other permit, agreement or authorization required in connection with operations on rights-of-way or public property including, without limitation, permits and agreements for placing devices on or in poles, conduits or other structures, whether owned by the city or a private entity, or for excavating or performing other work in or along the rights-of-way.

"**Franchise agreement**" means a contract entered into in accordance with the provisions of this chapter between the city and a franchisee that sets forth, subject to this chapter, the terms and conditions under which a franchise will be exercised.

"**Gross revenue**" includes all revenues of a provider that may be included as gross revenue within the meaning of Chapter 26, Title 11 Utah Code Annotated, 1953, as amended.

"**Infrastructure provider**" means a person providing to another, for the purpose of providing telecommunication services to customers, all or part of the necessary system which uses the rights-of-way.

"**Open video service**" means any video programming services provided to any person through the use of rights-of-way, by a provider that is certified by the FCC to operate an open video system pursuant to Sections 651, et seq., of the Telecommunications Act (to be codified at 47 U.S.C. Title VI, Part V), regardless of the system used.

"**Open video system**" means the system of cables, wires, lines, towers, wave guides, optic fiber, microwave, laser beams, and any associated converters, equipment or facilities designed and constructed for the purpose of producing, receiving, amplifying or distributing open video services to or from subscribers or locations within the city.

"**Operator**" means any person who provides service over a telecommunications system and directly or through one or more persons owns a controlling interest in such system, or who otherwise controls or is responsible for the operation of such a system.

"**Ordinance**" or "telecommunications ordinance" means the telecommunications ordinance codified in this chapter concerning the granting of franchises in and by the city for the construction, ownership, operation, use or maintenance of a telecommunications system.

"**Person**" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the city.

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"Personal wireless services facilities" has the same meaning as provided in Section 704 of the Act (47 U.S.C. 332(c)(7)(c)), which includes what is commonly known as cellular and PCS services that do not install any system or portion of a system in the rights-of-way.

"Provider" means an operator, infrastructure provider, resaler or system lessee.

"PSC" means the Public Service Commission, or any successor thereto.

"Resaler" refers to any person that provides local exchange service over a system for which a separate charge is made, where that person does not own or lease the underlying system used for the transmission.

"Rights-of-way" means the surface of and the space above and below any public street, sidewalk, alley, or other public way of any type whatsoever, now or hereafter existing as such within the city.

"Signal" means any transmission or reception of electronic, electrical, light or laser or radio frequency energy or optical information in either analog or digital format.

"System lessee" refers to any person that leases a system or a specific portion of a system to provide services.

"Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing (e.g., data, video, and voice), without change in the form or content of the information sent and received.

"Telecommunications system" or "system" means all conduits, manholes, poles, antennas, transceivers, amplifiers and all other electronic devices, equipment, wire and appurtenances owned, leased or used by a provider, located in the rights-of-way and utilized in the provision of services, including fully digital or analog, voice, data and video imaging and other enhanced telecommunications services.

Telecommunications system or systems also includes an open video system.

"Telecommunications service(s)" or "services" means any telecommunications services provided by a provider within the city that the provider is authorized to provide under federal, state and local law, and any equipment and/or facilities required for and integrated with the services provided within the city, except that these terms do not include "cable service" as defined in the Cable Communications Policy Act of 1984, as amended by the Cable Television Consumer Protection and Competition Act of 1992 (47 U.S.C. 521, et seq.), and the Telecommunications Act of 1996.

Telecommunications system or systems also includes an open video system.

"Wire" means fiber optic telecommunications cable, wire, coaxial cable, or other transmission medium that may be used in lieu thereof for similar purposes. (Ord. 248-97 § 2)

5.24.050 Franchise required.

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A. Nonexclusive Franchise. The city is empowered and authorized to issue nonexclusive franchises governing the installation, construction and maintenance of systems in the city's rights-of-way, in accordance with the provisions of this chapter. The franchise is granted through a franchise agreement entered into between the city and provider.

B. Every Provider Must Obtain. Except to the extent preempted by federal or state law, as ultimately interpreted by a court of competent jurisdiction, including any appeals, every provider must obtain a franchise prior to constructing a telecommunications system or providing telecommunications services using the rights-of-way, and every provider must obtain a franchise before constructing an open video system or providing open video services via an open video system. Any open video system or service shall be subject to the customer service and consumer protection provisions applicable to the cable TV companies to the extent the city is not preempted or permitted as ultimately interpreted by a court of competent jurisdiction, including any appeals. The fact that particular telecommunications systems may be used for multiple purposes does not obviate the need to obtain a franchise for other purposes. By way of illustration and not limitation, a cable operator of a cable system must obtain a cable franchise, and, should intend to provide telecommunications services over the same system, must also obtain a telecommunications franchise.

C. Nature of Grant. A franchise shall not convey title, equitable or legal, in the rights-of-way. A franchise is only the right to occupy rights-of-way on a nonexclusive basis for the limited purposes and for the limited period stated in the franchise; the right may not be subdivided, assigned or subleased. A franchise does not excuse a provider from obtaining appropriate access or pole attachment agreements before collocating its system on the property of others, including the city's property. This section shall not be construed to prohibit a provider from leasing conduit to another provider, so long as the lessee has obtained a franchise.

D. Current Providers. Except to the extent exempted by federal or state law, any provider acting without a franchise on the effective date of the ordinance codified in this chapter shall request issuance of a franchise from the city within ninety (90) days of the effective date of said ordinance.

If such request is made, the provider may continue providing service during the course of negotiations. If a timely request is not made, or if negotiations cease and a franchise is not granted, the provider shall comply with the provisions of Section 5.24.110(D).

E. Nature of Franchise. The franchise granted by the city under the provisions of this chapter shall be a nonexclusive franchise providing the right and consent to install, repair, maintain, remove and replace its system on, over and under the rights-of-way in order to provide services.

F. Regulatory Approval Needed. Before offering or providing any services pursuant to the franchise, a provider shall obtain any and all regulatory approvals, permits, authorizations or licenses for the offering or provision of such services from the appropriate federal, state and local authorities, if required, and shall submit to the city upon the written request of the city evidence of all such approvals, permits, authorizations or licenses.

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G. **Term.** No franchise issued pursuant to this chapter shall have a term of less than five years or greater than fifteen (15) years.

Each franchise shall be granted in a nondiscriminatory manner. (Ord. 248-97 § 3)

5.24.060 Compensation and other payments.

A. **Compensation.** As fair and reasonable compensation for any franchise granted pursuant to this chapter, a provider shall have the following obligations:

1. **Application Fee.** In order to offset the cost to the city to review an application for a franchise and in addition to all other fees, permits or charges, a provider shall pay to the city, at the time of application, five hundred dollars (\$500.00) as a nonrefundable application fee.

2. **Franchise Fees.** The franchise fee, if any, shall be set forth in the franchise agreement. The obligation to pay a franchise fee shall commence on the completion date.

The franchise fee is offset by any business license fee or business license tax enacted by the city.

3. **Excavation Permits.** The provider shall also pay fees required for an excavation permit as provided in Chapter 15.12.

B. **Timing.** Unless otherwise agreed to in the franchise agreement, all franchise fees shall be paid on a monthly basis within forty-five (45) days of the close of each calendar month.

C. **Fee Statement and Certification.** Unless a franchise agreement provides otherwise, each fee payment shall be accompanied by a statement showing the manner in which the fee was calculated and shall be certified as to its accuracy.

D. **Future Costs.** A provider shall pay to the city or to third parties, at the direction of the city, an amount equal to the reasonable costs and reasonable expenses that the city incurs for the services of third parties (including but not limited to attorneys and other consultants) in connection with any renewal or provider-initiated renegotiation, or amendment of this chapter or a franchise; provided, however, that the parties shall agree upon a reasonable financial cap at the outset of negotiations. In the event the parties are unable to agree, either party may submit the issue to binding arbitration in accordance with the rules and procedures of the American Arbitration Association.

E. **Taxes and Assessments.** To the extent taxes or other assessments are imposed by taxing authorities, other than the city on the use of the city property as a result of a provider's use or occupation of the rights-of-way, the provider shall be responsible for payment of its pro rata share of such taxes, payable annually unless otherwise required by the taxing authority. Such payments shall be in addition to any other fees payable pursuant to this chapter.

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F. Interest on Late Payments. In the event that any payment is not actually received by the city on or before the applicable date fixed in the franchise, interest thereon shall accrue from such date until received at the rate charged for delinquent state taxes.

G. No Accord and Satisfaction. No acceptance by the city of any fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of such fee payment be construed as a release of any claim the city may have for additional sums payable.

H. Not in Lieu of Other Taxes or Fees. The fee payment is not a payment in lieu of any tax, fee or other assessment except as specifically provided in this chapter, or as required by applicable law. By way of example, and not limitation, excavation permit fees and fees to obtain space on the city-owned poles are not waived and remain applicable.

I. Continuing Obligation and Holdover. In the event a provider continues to operate all or any part of the system after the term of the franchise, such operator shall continue to comply with all applicable provisions of this chapter and the franchise, including, without limitation, all compensation and other payment provisions throughout the period of such continued operation; provided, that any such continued operation shall in no way be construed as a renewal or other extension of the franchise, nor as a limitation on the remedies, if any, available to the city as a result of such continued operation after the term, including, but not limited to, damages and restitution.

J. Costs of Publication. A provider shall assume any publication costs associated with its franchise that may be required by law. (Ord. 248-97 § 4)

5.24.070 Franchise applications.

A. Franchise Application. To obtain a franchise to construct, own, maintain or provide services through any system within the city, to obtain a renewal of a franchise granted pursuant to this chapter, or to obtain the city approval of a transfer of a franchise, as provided in Section 5.24.090(A)(2), granted pursuant to this chapter, an application must be filed with city on the form attached to the ordinance codified in this chapter as Exhibit A, which is incorporated by reference. The application form may be changed by the city administrator so long as such changes request information that is consistent with this chapter. Such application form, as amended, is incorporated by reference.

B. Application Criteria. In making a determination as to an application filed pursuant to this chapter, the city may, but shall not be limited to, request the following from the provider:

1. A copy of the order from the PSC granting a certificate of convenience and necessity;
2. Certification of the provider's financial ability to compensate the city for provider's intrusion, maintenance and use of the rights-of-way during the franchise term proposed by the provider;
3. Provider's agreement to comply with the requirements of Section 5.24.080.

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C. Franchise Determination. The city, in its discretion, shall determine the award of any franchise on the basis of these and other considerations relevant to the use of the rights-of-way, without competitive bidding. (Ord. 248-97 § 5)

5.24.080 Construction and technical requirements.

A. General Requirement. No provider shall receive a franchise unless it agrees to comply with each of the terms set forth in this section governing construction and technical requirements for its system, in addition to any other reasonable requirements or procedures specified by the city or the franchise, including requirements regarding locating and sharing in the cost of locating portions of the system with other systems or with city utilities. A provider shall obtain an excavation permit, pursuant to the excavation ordinance, before commencing any work in the rights-of-way.

B. Quality. All work involved in the construction, maintenance, repair, upgrade and removal of the system shall be performed in a safe, thorough and reliable manner using materials of good and durable quality. If, at any time, it is determined by the FCC or any other agency granted authority by federal law or the FCC to make such determination, that any part of the system, including, without limitation, any means used to distribute signals over or within the system, is harmful to the public health, safety or welfare, or quality of service or reliability, then a provider shall, at its own cost and expense, promptly correct all such conditions.

C. Licenses and Permits. A provider shall have the sole responsibility for diligently obtaining, at its own cost and expense, all permits, licenses or other forms of approval or authorization necessary to construct, maintain, upgrade or repair the system, including but not limited to any necessary approvals from persons and/or the city to use private property, easements, poles and conduits. A provider shall obtain any required permit, license, approval or authorization, including but not limited to excavation permits, pole attachment agreements, etc., prior to the commencement of the activity for which the permit, license, approval or authorization is required.

D. Relocation of the System.

1. New Grades or Lines. If the grades or lines of any rights-of-way are changed at any time in a manner affecting the system, then a provider shall comply with the requirements of the excavation ordinance.

2. City Authority to Move System in Case of Emergency. The city may, at any time, in case of fire, disaster or other emergency, as determined by the city in its reasonable discretion, cut or move any parts of the system and appurtenances on, over or under the rights-of-way of the city, in which event the city shall not be liable therefore to a provider. The city shall notify a provider in writing prior to, if practicable, but in any event as soon as possible and in no case later than the next business day following any action taken under this section. Notice shall be given as provided in Section 5.24.150.

3. Provider Required to Temporarily Move System for Third Party. A provider shall, upon prior reasonable written notice by the city or any person holding a permit to move

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any structure, and within the time that is reasonable under the circumstances, temporarily move any part of its system to permit the moving of the structure. A provider may impose a reasonable charge on any person other than the city for any such movement of its systems.

4. Rights-of-Way Change--Obligation to Move System. When the city is changing a rights-of-way and makes a written request, a provider is required to move or remove its system from the rights-of-way, without cost to the city, to the extent provided in the excavation ordinance. This obligation does not apply to systems originally located on private property pursuant to a private easement, which property was later incorporated into the rights-of-way, if that private easement grants a superior vested right. This obligation exists whether or not the provider has obtained an excavation permit.

E. Protect Structures. In connection with the construction, maintenance, repair, upgrade or removal of the system, a provider shall, at its own cost and expense, protect any and all existing structures belonging to the city. A provider shall obtain the prior written consent of the city to alter any water main, power facility, sewerage or drainage system, or any other municipal structure on, over or under the rights-of-way of the city required because of the presence of the system. Any such alteration shall be made by the city or its designee on a reimbursable basis. A provider agrees that it shall be liable for the costs incurred by the city to replace or repair and restore to its prior condition in a manner as may be reasonably specified by the city, any municipal structure or any other rights-of-way of the city involved in the construction, maintenance, repair, upgrade or removal of the system that may become disturbed or damaged as a result of any work thereon by or on behalf of a provider pursuant to the franchise.

F. No Obstruction. In connection with the construction, maintenance, upgrade, repair or removal of the system, a provider shall not unreasonably obstruct the rights-of-way of fixed guide way systems, railways, passenger travel, or other traffic to, from or within the city without the prior consent of the appropriate authorities.

G. Safety Precautions. A provider shall, at its own cost and expense, undertake all necessary and appropriate efforts to prevent accidents at its work sites, including the placing and maintenance of proper guards, fences, barricades, security personnel and suitable and sufficient lighting, and such other requirements prescribed by OSHA and Utah OSHA. A provider shall comply with all applicable federal, state and local requirements including but not limited to the National Electric Safety Code.

H. Repair. After written reasonable notice to the provider, unless, in the sole determination of the city, an eminent danger exists, any rights-of-way within the city which are disturbed or damaged during the construction, maintenance or reconstruction by a provider of its system may be repaired by the city at the provider's expense, to a condition as good as that prevailing before such work was commenced. Upon doing so, the city shall submit to such a provider an itemized statement of the cost for repairing and restoring the rights-of-ways intruded upon. The provider shall, within thirty (30) days after receipt of the statement, pay to the city the entire amount thereof.

I. System Maintenance. A provider shall:

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1. Install and maintain all parts of its system in a non-dangerous condition throughout the entire period of its franchise.
2. Install and maintain its system in accordance with standard prudent engineering practices and shall conform, when applicable, with the National Electrical Safety Code and all applicable other federal, state and local laws or regulations;
3. At all reasonable times, permit examination by any duly authorized representative of the city of the system and its effect on the rights-of-way.

J. Trimming of Trees. A provider shall have the authority to trim trees, in accordance with all applicable utility restrictions, ordinance and easement restrictions, upon and hanging over rights-of-way so as to prevent the branches of such trees from coming in contact with its system. (Ord. 248-97 § 6)

5.24.090 Franchise and license nontransferable.

A. Notification of Sale.

1. **PSC Approval.** When a provider is the subject of a sale, transfer, lease, assignment, sublease or disposed of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, consolidation or otherwise, such that it or its successor entity is obligated to inform or seek the approval of the PSC, the provider or its successor entity shall promptly notify the city of the nature of the transaction. The notification shall include either:

- a. The successor entity's certification that the successor entity unequivocally agrees to all of the terms of the original provider's franchise agreement; or
- b. The successor entity's application in compliance with Section 5.24.070.

2. **Transfer of Franchise.** Upon receipt of a notification and certification in accordance with subsection (A)(1)(a) of this section, the city designee, as provided in Subsection 5.24.110(A)(1), shall send notice affirming the transfer of the franchise to the successor entity. If the city has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application for the transfer.

The application shall comply with Section 5.24.070.

3. **If PSC Approval No Longer Required.** If the PSC no longer exists, or if its regulations or state law no longer require approval of transactions described in subsection A of this section, and the city has good cause to believe that the successor entity may not comply with this chapter or the franchise agreement, it may require an application. The application shall comply with Section 5.24.070.

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B. Events of Sale. The following events shall be deemed to be a sale, assignment or other transfer of the franchise requiring compliance with subsection A of this section: (i) the sale, assignment or other transfer of all or a majority of a provider's assets to another person; (ii) the sale, assignment or other transfer of capital stock or partnership, membership or other equity interests in a provider by one or more of its existing shareholders, partners, members or other equity owners so as to create a new controlling interest in a provider; (iii) the issuance of additional capital stock or partnership, membership or other equity interest by a provider so as to create a new controlling interest in such a provider; or (iv) the entry by a provider into an agreement with respect to the management or operation of such provider or its system. (Ord. 248-97 § 7)